

# **PUBLIC SAFETY ADVISORY BOARD**

## **REPORT TO THE IOWA GENERAL ASSEMBLY**

**DECEMBER 1, 2013**

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## Introduction

The Iowa General Assembly, during its 2010 legislative session, created a new body, the Public Safety Advisory Board (PSAB). The purpose of the Board is to provide the General Assembly with an analysis of current and proposed criminal code provisions. The mission of this Board is to provide research, evaluation, and data to the General Assembly to facilitate improvement in the criminal justice system in Iowa in terms of public safety, improved outcomes, and appropriate use of public resources.

The duties of the Board, as enumerated in the Iowa Code, consist of the following:

- a. Reviewing and making recommendations relating to current sentencing provisions. In reviewing such provisions the board shall consider the impact on all of the following:
  1. Potential disparity in sentencing.
  2. Truth in sentencing.
  3. Victims.
  4. The proportionality of specific sentences.
  5. Sentencing procedures.
  6. Costs associated with the implementation of criminal code provisions, including costs to the judicial branch, department of corrections, and judicial district departments of correctional services, costs for representing indigent defendants, and costs incurred by political subdivisions of the state.
  7. Best practices related to the department of corrections including recidivism rates, safety and efficient use of correctional staff, and compliance with correctional standards set by the federal government and other jurisdictions.
  8. Best practices related to the Iowa child death review team established in section 135.43 and the Iowa domestic abuse death review team established in section 135.109.
- b. Reviewing and making recommendations relating to proposed legislation, in accordance with paragraph "a", as set by rule by the general assembly or as requested by the executive or judicial branch proposing such legislation.
- c. Providing expertise and advice to the legislative services agency, the department of corrections, the judicial branch, and others charged with formulating fiscal, correctional, or minority impact statements.
- d. Reviewing data supplied by the division, the department of management, the legislative services agency, the Iowa supreme court, and other departments or agencies for the purpose of determining the effectiveness and efficiency of the collection of such data.

The following report is a compilation of the PSAB's deliberations for submittal to the General Assembly as required. The PSAB respectfully submits this report, and welcomes the opportunity to provide any additional assistance to the Legislature upon request.

## Overview of Deliberations

The Public Safety Advisory Board (PSAB) met three times during CY2013. It held formal meetings on May 29, September 11, and November 20.

During its three CY2013 public meetings, the Public Safety Advisory Board continued to address a more limited agenda due to the lack of sufficient staff support in the Division of Criminal and Juvenile Justice Planning. In FY2011, its first year of operation, the PSAB was provided with staff support through a one-time allocation from the Underground Storage Tank Fund. Since the loss of this funding in FY2012 and lack of replacement funding, the PSAB has not possessed the resources to conduct the in-depth, timely analyses members believe are necessary to adequately fulfill statutory responsibilities.

Nonetheless, several new issue papers were prepared for the Public Safety Advisory Board in CY2013. One of these dealt with the mandatory 70% sentences established in Iowa Code §902.12. Another stemmed from a Legislative Council request to examine kidnapping statutes in Iowa as an outgrowth of the kidnapping of two teenage girls in Iowa and the murder of one. Finally, Representatives Chip Baltimore and Mary Wolfe requested the PSAB's assistance in examining the options available for offenders to be removed from the Sex Offender Registry and the Special Sentence. Reports on the first two of these topics are included as part of this annual report.

The PSAB continues its support for the following stemming from activity in 2012:

- **The Board supports implementation of the Results First model in Iowa's corrections and juvenile justice systems.**
- **The Board continues to support equalizing the penalties between crack and powder cocaine.**
- **The Board supports continued study of Youthful Offender legislation.**

Included as Appendix 2 is an overview of the Results First model supported by the Pew Foundation.

To keep alive several of the issues addressed previously in PSAB reports, brief summaries of four issue papers are included below, along with PSAB recommendations for the General Assembly.

## **Mandatory Minimums for Drug Offenders**

A mandatory minimum sentence requires that offenders serve a certain portion of their sentence in confinement, without the possibility of parole, until the required portion of time has been served. Mandatory minimum sentencing became popular in the 1980's and 1990's as a proposed way to control crime and create equity in sentencing. However, a growing body of research indicates that mandatory sentencing is ineffective and has not reduced recidivism rates or gender, age, and race disparities. In addition, exceptions in the law allow for reductions in mandatory sentencing if offenders provide helpful information to authorities, typically benefiting high risk offenders and resulting in higher incarceration of low risk offenders.

The study was undertaken to assess the effectiveness of mandatory minimum sentences for drug traffickers. In Iowa, the drug offender mandatory minimum is mandated by Iowa Code §124.413 and requires that offenders serve at least one-third of the maximum sentence of their offense class. Iowa Code §901.10 allows for reductions in the mandatory minimum sentence through earned time.

The study resulted in five conclusions, presented below, and one recommendation approved by the Public Safety Advisory Board:

1. Serving a longer prison time can potentially reduce offenders' risk scores.
2. Mandatory minimum sentences for drug traffickers do not appear to reduce recidivism; however, they may keep more serious offenders in prison longer, postponing the opportunity to reoffend.
3. Offender risk should be considered when making sentencing decisions involving mandatory sentences. Providing offenders' levels of risk at sentencing can help determine whether offenders should be sentenced to a mandatory term.
4. Eliminating mandatory sentences for low/low moderate risk offenders would result in cost savings without changing return-to-prison rates.
5. Risk assessment scores at entrance and particularly at release appear to better predict recidivism than length of stay in prison or the type of drug an offender was convicted of trafficking.

### **Recommendation of the Public Safety Advisory Board**

**The PSAB recommends that a validated risk assessment be made a standard part of pre-sentence investigation reports and that sufficient training is provided to those in the criminal justice system (defense, prosecutors, and the judiciary) so that they are utilized appropriately.**

## **Mandatory Minimums for Robbery Offenders**

A study on mandatory minimum sentences was undertaken to assess the effects of 70% sentences, specifically for robbery crimes. The mandatory minimum for Robbery offenses requires that offenders serve 70% of their sentence prior to being eligible for parole. Iowa Code 901.10 allows for reductions in the mandatory minimum sentence through earned time but this is capped at 15% of their sentence.

The study resulted in three recommendations, which were approved with one dissenting vote:

### **Recommendations**

The Public Safety Advisory Board has studied the mandatory minimum sentence imposed by §902.12 of the Iowa Code (the “70% rule”) and has concluded that the current law does not meet the public safety needs of Iowans. At its September, 2013 meeting, no voting member of the Board indicated support for continuation of the 70% rule as applied to robbery offenses as it currently exists in statute. To that end, the Public Safety Advisory Board offers the following recommendations:

1. As in current law, robbery should remain a forcible felony that requires incarceration.
2. Continue the current 15% cap on earned time for robbery offenses covered by §902.12. While this option contributes to larger prison populations, it permits the incapacitation of some of the prison system’s most dangerous and violent offenders, increasing public safety.
3. Establish a mandatory minimum term of seven years for Robbery in the First Degree and three years for Robbery in the Second Degree. These recommended minimum sentences are consistent with the average length-of-stay for robbers prior to establishment of the 70% sentence. They would require imprisonment of robbers for a period consistent with the seriousness of robbery offenses while allowing the Board of Parole discretion to consider possible release between expiration of the mandatory minimum and the maximum 85% term. While allowing for earlier release of lower-risk inmates, this proposal also would permit lengthy incarceration of those individuals at high risk to reoffend or those individuals who pose a significant threat to public safety.

## **Modifying penalties for powder and crack cocaine**

The PSAB in 2010 voted to support legislation to reduce the disparity between crack cocaine and powder cocaine penalties, by a vote of 9 in favor and 6 against. Further discussion led to a consensus by the PSAB that the amounts and attendant penalties for the two forms of cocaine should be equalized. However, the PSAB disagreed on how this should be accomplished but would support legislation to do the following:

### **Recommendation of the Public Safety Advisory Board**

#### **Amend Iowa Code §124.401 for the amounts of crack cocaine.**

- a. §124.401(a)(3) to greater than 125 grams**
- b. §124.401(b)(3) to greater than 35 grams and not more than 125 grams**
- c. §124.401(c)(3) to equal to or less than 35 grams**

In Iowa, prohibited acts involving more than 10 grams but less than 50 grams of crack currently carry the same penalty as offenses involving more than 100 but less than 500 grams of powder cocaine. Iowa data presented to the PSAB suggest that this disparity in penalties contributes to disproportionate incarceration of African-Americans. Data were also presented pertaining to the amounts of crack and powder cocaine seizures. Research was presented illustrating that the physiological and psychotropic effects of crack and powder cocaine are the same, and that the drugs are now widely acknowledged as pharmacologically identical.

Also studied was a correctional impact analysis completed during the 2009 Legislative session showing that decreasing the threshold amounts of powder cocaine to those of crack cocaine would have a disproportionate effect on the incarceration rate of African Americans. The simulation included in the 2009 analysis suggested that African Americans would comprise 46% of the prison population increase attributable to increased powder penalties.

Raising the crack amounts to equal those of powder was felt by some to be the most appropriate approach, but consensus was not reached on that option.

The final approach considered by the PSAB hypothesized that the distribution of Class C, B, and B+ offenses be based upon the distribution of amounts of drugs seized (discounting outliers of large seizures). As an illustration, this approach would result in the same percentage of powder and crack seizures resulting in Class C charges. This approach raised the amounts of crack cocaine within each offense class but did not make the amounts equal gram to gram. This approach resulted in the change recommended above, upon which consensus was reached.

## Transitioning Youth

Currently juvenile court jurisdiction for juvenile offenders in Iowa ends at age 18, except in a few special circumstances. The Iowa Code allows the provision of a Youthful Offender Status for youth 15 years of age and younger, which allows youth to be placed under adult court jurisdiction, but receive sanctions and services by the juvenile justice system until the 18<sup>th</sup> birthday. Once a youth turns 18 years of age, a court hearing is held to determine if continued sanctions and services are required by the Department of Corrections. This provision is unavailable to youth aged 16 and 17.

The PSAB in its September 12<sup>th</sup> meeting heard testimony from a representative of the chief juvenile court officers that during the most recent two legislative sessions they have supported legislation to expand the Youthful Offender Status for all youth less than 18 years of age. The legislation has not passed. The Chiefs' representative discussed the issue with the PSAB in an effort to better inform the Board about the issues involved in either maintaining 16- and 17-year-olds in juvenile court versus automatically waiving them to adult criminal court. The PSAB is also aware of a position paper and suggested language from the Honorable Stephen C. Clarke, Judge, First Judicial District that would change IA Code §803.6 and IA Code §232.45 to allow juveniles age 16 and 17 to be treated as youthful offenders

The *Juvenile Waivers to Adult Court: A Review of Outcomes for Youth* report (March 2011) provides information on outcomes in the juvenile justice system and in the adult system for youth who have been waived to the adult system. The findings include:

- The mandatorily-waived juvenile offenders who were sentenced to prison had a recidivism rate of 43%. The mandatorily-waived offenders who were placed on adult probation had a recidivism rate of 80%;
- Juvenile offenders age 16 and 17 who were waived to adult court had a recidivism rate of 67%;
- Juvenile offenders who received “reverse waivers” had a 12.5% recidivism rate in juvenile court and 46% when they become adults and juvenile court jurisdiction ends.

Another report conducted by CJJP for the time period of January, 2011 through June, 2012 showed that recidivism rates for juvenile offenders under juvenile justice system supervision upon returning home from out-of-home placements was 16.8%. These data suggest that maintaining youth in the juvenile justice system is more effective than handling them in the adult system. This approach is also consistent with recent research suggesting that brain development is not completed until youth reach age 25.

### Legislative Options

1. Expansion of Youthful Offender Status to include all youth less than 18 years of age, including those 16- and 17-year-old forcible felons who currently are subject to mandatory waiver.
2. Expansion of Youthful Offender Status to include all youth less than 18 years of age, including the mandatory waiver to adult court for 16 and 17 year old forcible felons, and extend jurisdiction of these youth in the juvenile court system to the age of 21, at which time a court hearing would be held to determine if continued sanctions and services should continue.

**The Public Safety Advisory Board is not making a recommendation on this topic at this time, but wishes to bring its interest in possible legislative changes to the General Assembly. While extending youthful offender status to 16- and 17-year-old youth will require additional resources in the juvenile courts, evidence suggests that there may be long-term benefits to doing so.**



## Juvenile Waivers to Adult Court

The Public Safety Advisory Board requested a study to track youth waived to adult court and a comparable cohort of youth who remained under the jurisdiction of the juvenile court. The study followed four cohorts of youth in an effort to determine the impact of waiving youth from the juvenile courts to the adult justice system. The cohorts included a group of youth who were automatically processed in the adult system due to the severity of the charges against them, a group waived to the adult system after starting in the juvenile court, a group returned to the juvenile court after having initially been waived to the adult system, and a group of “youthful offenders” who started supervision in the juvenile court with the option of moving into the adult system upon reaching age 18.

Recent research indicates that waiving juvenile cases to adult court can be harmful and lead to greater recidivism; the results from this study support the research. This study supports the premise that youth maintained by the adult court, whether on mandatory exclusions or adult court waiver, have high rates of reconviction. While youth on reverse waivers had a very low rate of recidivism while under juvenile court supervision, they had a nearly 46% conviction rate in adult court after they reached the age of 18. This suggests that either these youth were not truly rehabilitated or possibly had already been through adult court and were consequently not deterred by adult justice system sanctions. The final group, youthful offenders, also had a low incidence of recidivism, opening the door to further exploration for use of this infrequently used sentencing option.

An ad hoc committee seated by the Juvenile Justice Advisory Council (JJAC) discussed the current practices of juvenile waivers to adult court. Juveniles who are at least 14 years of age may be waived to adult court, and juveniles who are 16 or 17 at the time of offense and who have committed enumerated offenses in IA Code § 232.8, subsection 1, paragraph “c” (forcible felonies), must be transferred to adult court. The committee reviewed statistics on juveniles and adult court for FY2010, as found below.

In addition, the ad hoc committee reviewed a publication by the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) entitled “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?” that reviewed studies on the subject. This review found that recidivism rates are generally higher for juveniles waived to adult court when compared to similarly situated youth who were kept in juvenile court.

**The PSAB is not making a recommendation on this topic at this time, but wishes to bring its interest in possible legislative changes to the General Assembly. While reducing the incidence of waivers from juvenile court to adult court – or abolishing mandatory waivers altogether -- would not occur without controversy, evidence suggests that there may be long-term benefits to doing so.**

# **An Analysis of the use of 70% Mandatory Minimum Sentences in Iowa**

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## PREFACE

The Public Safety Advisory Board (PSAB) was created by the Iowa General Assembly in 2010 to provide independent advice to the Legislative and Executive Branches pertaining to operation of Iowa's justice system. Included among the PSAB's statutory responsibilities are analyzing current and proposed criminal code provisions and providing research, evaluation, and data to facilitate improvement in the criminal justice system in Iowa in terms of public safety, improved outcomes, and appropriate use of public resources. An additional responsibility of the Board includes reviewing and making recommendations relating to current sentencing provisions. This report fulfills the requirements set forth in Iowa Code §216.133A, specifically addressing the effects of the "truth in sentencing" policies enacted in 1996.

The focus of this report is on the impact of the mandatory minimum sentences established in Iowa in 1996 with the goal of punishing and incapacitating criminals convicted of selected forcible felonies in the State. At the time this was considered a step toward increasing public safety, as the felons convicted of the applicable crimes were regarded as being uniformly high-risk and dangerous. Since that time, however, it has become evident that not all offenders convicted of these offenses are dangerous, and research on mandatory terms has suggested that they may be counterproductive.

For the purpose of this report, the PSAB has attempted to examine the impact of the mandatory minimum terms imposed by Iowa Code §902.12 to enable recommendations as to their continuation or modification as applied to Robbery offenses. We find generally that the "one size fits all" approach of these mandatory minimums is not an effective or efficient approach; while it may assist in incapacitating some dangerous criminals, it does so at a significant cost and with little distinction between low- and high-risk offenders. We believe that Iowa's criminal justice system can do better, both in terms of public protection and efficient use of state resources.

## **POLICY**

The findings from this report suggest that thoughtful consideration should be given to modifying the mandatory minimum sentences as to Robbery offenses found in §902.12 of the Code of Iowa. The current statute requires a mandatory flat period of incarceration for individuals convicted of certain forcible felonies. Mandatory minimum sentences, when given to the highest risk offenders, may postpone their opportunities to offend, but the same sentences, applied to low-risk offenders, tax correctional resources with little benefit to public safety. In requiring incarceration accompanied by a mandatory minimum term, the current policy does not consider variations in offense, the offender's role in the offense, or the criminal history of the offender. It relies on the plea negotiation process to weed out offenders "undeserving" of a mandatory minimum term. The PSAB agrees that this is not an effective or efficient way to dispense justice.

## **Recommendations**

The Public Safety Advisory Board has studied the mandatory minimum sentence imposed by §902.12 of the Iowa Code (the "70% rule") and has concluded that the current law does not meet the public safety needs of Iowans. At its September, 2013 meeting, no voting member of the Board indicated support for continuation of the 70% rule as applied to robbery offenses as it currently exists in statute. To that end, the Public Safety Advisory Board offers the following recommendations:

4. As in current law, robbery should remain a forcible felony that requires incarceration.
5. Continue the current 15% cap on earned time for robbery offenses covered by §902.12. While this option contributes to larger prison populations, it permits the incapacitation of some of the prison system's most dangerous and violent offenders, increasing public safety.
6. Establish a mandatory minimum term of seven years for Robbery in the First Degree and three years for Robbery in the Second Degree. These recommended minimum sentences are consistent with the average length-of-stay for robbers prior to establishment of the 70% sentence. They would require imprisonment of robbers for a period consistent with the seriousness of robbery offenses while allowing the Board of Parole discretion to consider possible release between expiration of the mandatory minimum and the maximum 85% term. While allowing for earlier release of lower-risk inmates, this proposal also would permit lengthy incarceration of those individuals at high risk to reoffend or those individuals who pose a significant threat to public safety.

The mandatory minimum term should either not be reduced by earned time or be subject to a maximum of 15% earned time, consistent with truth-in-sentencing.

This proposal modifies the "one size fits all" mandatory minimum of current law, providing more discretion to the Department of Corrections (in recommending early release) and the Board of Parole (in considering work release or parole) over a time period longer than currently permitted. It will reduce unnecessary incarceration of lower risk offenders by allowing the Board of Parole to consider earlier release based upon institution programming and behavior, offender maturation, recommendations by the Department of Corrections, and other factors.



While the Public Safety Advisory Board anticipates savings in the correctional system resulting from these changes, it is not possible at this juncture to quantify those savings, as they will be dependent on the exercise of discretion by judges and the Board of Parole. There will undoubtedly be an increase in offender recidivism under this proposal, -- robbers released from prison have historically had high rates of re-arrest and return to prison -- but we expect that impact to be mitigated by improved correctional treatment outcomes, the use of evidence-based programming, and release practices informed by validated risk assessments.

One factor that should be addressed in modifying these sentencing options is that they increase the possibility of disparity in length-of-stay, as with increased discretion comes the opportunity for increased disparity. This should be mitigated, however, by permitting decisions on the time of release to reside solely in the Board of Parole. While parole practices may vary over time, disparity within a single entity (e.g., the Board of Parole) is more easily monitored and controlled than is possible in multiple venues (e.g., sentencing judges throughout the State). Nevertheless, the adoption of any of the changes recommended here should be accompanied by a requirement that the Division of Criminal and Juvenile Justice Planning monitor sentencing and release practices under the new provisions, reporting back annually to the Executive and Legislative branches as part of its legislation monitoring responsibilities.

## **I. Executive Summary**

The Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program encouraged states to increase correctional capacity for adults convicted of certain violent crimes. The funds allowed Iowa to implement sentences which carried mandatory minimum terms by limiting the amount of “earned time” for which offenders were eligible. Originally in Iowa these offenders were allowed only to reduce their maximum terms by 15 percent (hence, “85 percent” sentences). This eligibility requirement was later modified to permit up to a 30 percent reduction of sentence. These sentences, defined in §902.12 of the Iowa Code, will be referred to here as 70% sentences.

The purpose of this study is to examine the impact of 70% sentences in Iowa. Data used in this analysis were derived from the Iowa Court Information System (ICIS) and the Iowa Corrections Offender Network (ICON), using the Iowa Justice Data Warehouse (JDW). The report incorporates three analyses:

- The first analysis focuses on the impact of 70% mandatory sentences on Iowa’s prison population;
- The second examines demographic differences between offenders admitted to prison under 70% sentences and those who are not;
- The final analysis focuses on mandatory sentences resulting from robbery convictions, as robbery accounts for almost half of Iowa’s 70% sentences.

**Analysis #1 – The Effects of Mandatory Sentences on the Prison Population:** The initial analysis provides an historical examination of the number of new offenders entering prison on mandatory sentences from 7/1/1997-6/30/2013. This analysis also examines the growth of inmates incarcerated at the end of each fiscal year on 70% sentences. Findings from this analysis suggest that while the admission of new prisoners on mandatory sentences has remained relatively stable since FY1998, the number of prisoners in the population serving mandatory 70% sentences has steadily risen (to 1,088 on 6/30/2013, including sexual predators) and is expected to increase by nearly 56% in the next decade, absent policy reform.

### **Analysis #2 – Demographic Differences between Mandatory Sentence Servers and Other Inmates:**

The second analysis examines new prison admissions during FY2013 (7/1/2012-6/30/2013), focusing on demographic variables, total scores on the Level of Service Inventory-Revised (LSI-R), LSI-R criminal history sub-scores, and prior convictions. This analysis compares inmates serving non-70% terms with those serving mandatory 70% sentences. This analysis revealed the following:

- African-Americans are more likely to be admitted to prison on 70% crimes than Caucasians.
- Offenders age 18-and-under who enter prison are significantly more likely to be admitted to prison on mandatory 70% sentences than other groups.
- Offenders serving 70% sentences tend to have lower risk scores than offenders not serving mandatory terms.
- Offenders serving mandatory sentences tend to have fewer prior convictions than offenders serving non-mandatory sentences.

To further the analysis, comparisons were made between inmates serving 70% sentences with other *violent felony* offenders not serving such terms. This analysis revealed trends similar to the previous analysis, identifying significantly lower criminal history sub-scores for the 70% sentence group, and a significantly higher number of prior convictions for the non-70% group.

**Analysis #3 – Robbery Analysis:** The final analysis focuses on new offenders admitted to prison after being charged with robbery, with the first offender entering prison on 2/13/1970 and the last on 6/29/2012. Offenders were grouped into cohort periods by increments of five years prior to the availability of FY13 data. This more extensive analysis is presented because robbery offenders constitute such a high percentage of those entering prison under 70% sentences. Robbery is also one of the crimes exhibiting the most racial disproportionality in Iowa's prison admissions.

The cohort for this analysis included all new incoming inmates whose *original charges* included either Robbery-1 or Robbery-2, regardless of whether the robbery was the most serious offense charged. These offenders need not have been *convicted* of robbery, but they were originally charged with a robbery offense. The findings of the robbery analysis revealed the following:

- Length-of stay for robbery offenders has dramatically increased since establishment of the 70% mandatory minimum.
- The number of offenders serving sentences for Robbery-2 has stabilized, while Robbery-1 offenders will continue to increase until such time that releases balance admissions; at this juncture, the first Robbery-1 offenders admitted to prison with 70% mandatory terms (in 1996) are not yet eligible for release consideration.
- Once a sufficient number of Robbery-2 offenders passed their minimum release date, their length-of-stay has remained stable, with release typically occurring midway between their 70% mandatory minimum and their 85% expiration. When released, these offenders were released in much the same manner as Robbery-2 offenders prior to establishment of the 70% sentence.
- African-Americans are overrepresented in the Robbery-1 and Robbery-2 cohorts; on 6/30/13, more than half the offenders serving sentences for Robbery-1 as the most serious conviction offense were African-Americans. Inmates convicted of Robbery-2 were equally divided between African-Americans and Caucasians (including 14 of Hispanic ethnicity).
- Starting in FY2008, more African-Americans than Caucasians have been admitted to Iowa's prisons on robbery convictions.
- Since implementation of mandatory sentencing, the percentage of reduced charges from Robbery-1 to Robbery-2 has increased by about 40%. In recent years, charged robbers have entered prison on theft convictions in similar numbers to Robbery-2.
- Of new prison admissions originally charged with robbery, similar percentages of Caucasians and African-Americans entered prison on reduced charges, tentatively suggesting that the plea negotiation process is not racially biased. A more complete racial analysis of charge reduction would require examination of probationers originally charged with robbery.

The findings show that, 17 years after codification of the 70% sentences, the number of convicted robbers in Iowa's prison population is about the same as when the mandatory term was

implemented in 1996. While first- and second-degree robbers were about equally represented in the prison population in 1996, since that time the number convicted of robbery-2 has increased and then has decreased. First-degree robbers will outnumber second-degree robbers sometime in the next five years. This is problematic not just due to the anticipated increase, but also because a high percentage of those imprisoned for Robbery-1 are African-American, exacerbating disproportionality in Iowa's prison population

The over-representation of African-Americans in the prison population has been an ongoing issue for Iowa<sup>1</sup>. The results from this analysis suggest that mandatory sentences have a disproportionate impact on the African-Americans and that reducing disproportionality in Iowa's prison system will be extremely difficult absent some modification of the 70% sentences. That said, there is little indication here that justice system processing has contributed to this over-representation, as African-Americans sentenced to prison after robbery arrests are as likely as Caucasians to enter prison on reduced charges.

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1 See., e.g., Mauer, Mark, and Ryan S. King, "Uneven Justice: State Rates of Incarceration by Race and Ethnicity," The Sentencing Project, July, 2007. Iowa was found to have the Nation's third-highest rate of African-American imprisonment, following South Dakota and Wisconsin. Researchers at the University of Wisconsin-Milwaukee, found Iowa's rate of African-American male imprisonment the third-highest in the U.S. See Pawasrat and Quinn, "Wisconsin's Mass Incarceration of African-American Males: Workforce Challenges for 2013," Employment and Training Institute, Univ. of Wisconsin-Milwaukee (<http://www4.uwm.edu/eti/2013/BlackImprisonment.pdf>).

## II. Introduction

Declining crime rates in the 1990's were said to be attributable to the enactment of harsher sentences in the 1970's and 1980's, when the 'get tough on crime' approach became widely popular. The answer seemed to be clear: harsher sentences would deter more crime and improve public safety both through deterrence and incapacitation of predatory criminals. In an attempt to further reduce crime rates, lawmakers increased sentence length for various crimes, including expansion of mandatory minimum sentencing.<sup>2</sup> Since the enactment of mandatory sentences, research largely finds that mandatory sentencing is not associated with a general or specific deterrent effect, has not significantly improved public safety, and has become increasingly costly for corrections at the state and federal level.

Proponents of mandatory sentencing cite the importance of certainty in punishing proscribed behaviors and the benefits of incapacitating serious offenders for long periods. This logic was derived from a widely accepted notion that a large portion of serious crime is committed by a small group of offenders. Through the direct incapacitation of this population, public safety would increase as crime rates reduced.

The movement to harsher penalties, however, was not without its critics. As time has passed and more data have become available on the impacts of long prison sentences, these critics have become even more vocal. While "...mass imprisonment has helped reduce crime rates...most specialists agree that the effects have been considerably smaller than proponents claim and...we are now well past the point of diminishing returns. Confinement behind bars accounted for at most about a quarter of the substantial decline in crime that occurred during the 1990s (mainly, most researchers believe, by preventing imprisoned offenders from committing fresh crimes against the general public rather than by promoting a deterrent effect)."<sup>3</sup>

The deterrent effect of more severe sentencing depends on the extent to which offenders engage in a thoughtful analysis of the risks and benefits of their criminal behavior. Some behaviors are obviously more "detractable" than others. While some states and the federal government have established mandatory terms for those involved in drug trafficking, it is apparent that when one drug dealer is imprisoned there is likely another ready to take his or her place, as the potential financial benefits of the drug trade are substantial. Applying mandatory terms to crimes not having such potential financial gain could conceivably have a deterrent effect, however, as long as the behavior involved is planned and thoughtful, not the result of emotion or one-time opportunities.

Specific deterrence – that is, deterrence of offenders who have already been convicted of the proscribed behavior – is a separate issue. The evidence suggests, however, that longer prison terms do not reduce criminal behavior post-incarceration. A 1993 review of the literature by the Department of Justice confirmed that "[t]he great majority of recidivism studies of State and all studies of Federal prison releasees report that the amount of time inmates serve in prison does not increase or decrease the likelihood of recidivism, whether recidivism is measured as a parole revocation, rearrest, reconviction, or return to prison."<sup>4</sup> Additionally, there is no evidence to suggest that increases in the length of prison sentencing would eventually contribute to a reduction in recidivism.<sup>5</sup>

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<sup>2</sup> Pew Research Center, Washington, D.C. (2012). Time Served. The High Cost, Low Return of Longer Prison Terms. Public Safety Performance Project. [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Time\\_Served\\_report.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf)

<sup>3</sup> Petersilia, J., (2011). Beyond the Prison Bubble. *NIJ Journal* #268. <http://www.nij.gov/nij/journals/268/prison-bubble.htm>.

<sup>4</sup> U.S. Department of Justice, (1994) "An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories." <http://www.fd.org/docs/select-topics---sentencing/1994-DoJ-study-part-1.pdf>.

<sup>5</sup> Darley, John M. (2005). On the Unlikely Prospects of Reducing Crime Rates by Increasing the Severity of Prison Sentences. *13 J.L. & Pol'y*, 189.

More recently, many states are repositioning their approaches toward mandatory sentencing and are choosing to invest taxpayer dollars in different types of more cost-effective policies. “In the past five years more than a dozen states, starting with Texas and Kansas in 2007, have enacted comprehensive sentencing and corrections reforms, typically shifting non-violent offenders from prison and using the savings to fund more effective, less expensive alternatives. Partly due to these and other policy changes, 2009 was the first year in nearly four decades during which the state prison population declined<sup>6</sup>.

The primary purpose of this report is to examine the impact that mandatory 70% sentences have had on the Iowa prison population. A state’s prison population is determined by two factors: the number of offenders entering prison in a given time period and how long they stay. This report is organized in a way that allows us to examine how these factors are influenced by 70% sentences and the effects that these sentences have had and are expected to have on Iowa’s prison population.

A secondary purpose of this report is to examine the racial impact that mandatory sentences on the African-American prison population. As of 6/30/13, 18.6 percent of the African-American inmates in prison in Iowa were serving 70% sentences, compared to 11.7 percent of other inmates. The 2013-2023 Iowa Prison Population Forecast (in preparation) suggests that, absent changes, the 70% offender population will rise from 1,088 to 1,693 over the next ten years, with no abatement in the percentage of this population comprised by African-Americans. The long sentences accompanying the current structure of 70 percent sentences in Iowa will result in a continued rise in the percentage of African-American inmates in institutional populations.

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<sup>6</sup> Pew Research Center, Washington, D.C. (2012). Time Served. The High Cost, Low Return of Longer Prison Terms. Public Safety Performance Project. [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Time\\_Served\\_report.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf)

### III. Literature Review

Discussions regarding the impact of mandatory sentences have occurred for decades. Originally thought to deter crime and improve public safety, mandatory sentences became a popular solution. However, after years of research the vast sums of evidence find that "...increases in sentences have rarely, if ever, produced the desired reduction in crime rates".<sup>7</sup> The literature largely finds that mandatory sentencing promotes circumvention by judges and prosecutors, is not cost effective, and creates injustices in many forms. Additional research indicates that public support of these statutes is largely divided.

In 1990, Michael Tonry argued that "the weight of the evidence clearly shows that enactment of mandatory penalties has either no demonstrable marginal deterrent effects or short-term effects that rapidly waste away."<sup>8</sup> Part of the apparent reason for this lack of deterrent effect is that longer mandatory terms may be frequently circumvented either by charging offenders with crimes not requiring a mandatory term or agreeing to reduced charges in the plea negotiation process. "...There is massive evidence, which has accumulated for two centuries, that mandatory minimums foster circumvention by judges, juries, and prosecutors..."<sup>9</sup>

Schulhofer, in his study of the New York "Rockefeller" drug laws, noted that while the statutes increased both the probability of incarceration upon conviction and the severity of the sentences imposed, there were declines in the volume of arrests, the rate of indictment upon arrest, and the rate of conviction upon indictment. Thus, the overall probability of imprisonment dropped after enactment of the mandatory terms.<sup>10</sup>

Additional studies find that mandatory sentences are not cost effective and that the desired results could be achieved through different forms of incapacitation for low-level offenders. In 1994, a Federal Judicial Center report by Barbara S. Vincent and Paul J. Hofer examined the history of mandatory minimum sentences in the federal system.<sup>11</sup> Vincent and Hofer argued that mandatory sentences have produced unintended consequences for the criminal justice system. "There is substantial evidence that the mandatory minimums result every year in the lengthy incarceration of thousands of low-level offenders who could be effectively sentenced to short periods of time at an annual savings of several hundred million dollars, and that the mandatory minimums do not narrowly target violent criminals or major drug traffickers". Alternative sentencing guidelines, as opposed to mandatory sentencing, have historically produced fewer negative consequences for offenders and are more cost effective to the correctional system.

A 2012 report by the Pew Research Center examined the impact of longer prison sentences using data on 1990 and 2009 prison releasees from thirty-three reporting states. In Iowa, the average length-of-stay (LOS) for inmates has increased by 11% from 1990-2009 with variable LOS increases in violent crime (12%), property crime (12%), and drug crime (33%). Additional analysis indicates that from the reporting states, the average LOS has increased substantially from 1990-2009 and has had a costly impact. Inmates released in 2009 had spent an average of nine extra months incarcerated compared to 1990 releasees. It is estimated that the cost of additional incarceration has amounted to about \$23,300 per offender. "For offenders released from their original commitment in 2009 alone, the additional time behind bars cost

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<sup>7</sup> Darley, J. M. (2005). On the Unlikely Prospects of Reducing Crime Rates by Increasing the Severity of Prison Sentences. *13 J.L. & Pol'y*, 189.

<sup>8</sup> Tonry, M. (1990) Mandatory Penalties, in *16 Crime & Justice: A Review of Research*, at 243-44 (Michael Tonry ed., 1990).

<sup>9</sup> Tonry, M. (2009) The Most Unintended Effects of Mandatory Penalties: Two Centuries of Consistent Findings. *Crime and Justice*. Vol. 38, No. 1.

<sup>10</sup> Schulhofer, S.J. (1993). Rethinking Mandatory Minimums. *28 Wake Forest L. Rev.* 207.

<sup>11</sup> Vincent, B.S. & Hofer, P.J. (1994) "The Consequences of Mandatory Minimum Prison Terms: A Summary of Findings." *Federal Justice Center*. <http://www.fjc.gov/public/pdf.nsf/lookup/conmanmin.pdf/%24file/conmanmin.pdf>.

states over \$10 billion, with more than half of this cost attributable to non-violent offenders”. Pew argues that a large portion of 2004 prison releasees from Florida, Maryland, and Michigan could have served shorter sentences without influencing public safety.<sup>12</sup>

Recent studies find that mandatory sentences have been disproportionately applied to various racial groups, resulting in sentencing disparities. Mandatory sentences are more likely to be applied to Hispanic males. Also, greater proportions of African-Americans are affected by mandatory sentences because they are more likely than others to commit the covered offenses. Additionally, disproportionality in mandatory sentencing increases by location such that increases in an African-American population by county increases mandatory sentencing disparities by race.<sup>13</sup> Also mandatory sentences reserved for drug crimes have had a significant impact on female minority members, further affecting those with children.<sup>14</sup> While women commit the types of crimes associated with mandatory sentences less often, they are more affected by the sentencing due to their generally lower-risk and re-offense rates (i.e., they would be less likely to be sentenced to prison and serve long terms because of their less significant criminal history and lower risk).

The evidence suggests that certain groups are more likely than others to receive mandatory minimum sentences. Prosecutor discretion to seek mandatory minimum sentencing is influenced by several factors, including the nature of the offense, criminal history, and gender. Some studies argue that prosecutorial discretion could actually positively influence the varying disparities in mandatory minimum sentencing, suggesting that prosecutors can use their discretion to seek lesser charges to circumvent mandatory minimum sentencing for some offenders.<sup>15</sup> This ability can be viewed either positively or negatively, however, as it empowers prosecutors to select which offenders warrant a “break” and which do not.

While the wealth of research indicates that mandatory minimum sentencing is ineffective, “politicians appear to assume that the public is in strong support of these laws.”<sup>16</sup> Julian Roberts argues that this is an incorrect assumption and that, according to survey data, the public is actually largely divided in on the topic. Roberts argues that “there is more support for proportional sentencing than for utilitarian goals, such as deterrence or incapacitation.” Additional evidence indicates that the political advantages to promoting such statutes are significantly inflated.<sup>17</sup> Findings of a public opinion survey conducted in January of 2012 by the Mellman Group indicated that American voters “support...sentencing and corrections reforms (including reduced prison terms)” as well as “policy changes that shift non-violent offenders from prison to more effective, less expensive alternatives”.<sup>18</sup>

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<sup>12</sup>Pew Research Center, Washington, D.C. (2012). Time Served. The High Cost, Low Return of Longer Prison Terms. Public Safety Performance Project. [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Time\\_Served\\_report.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf)

<sup>13</sup> Ulmer, J.T., Kurlychek, M.C. & Kramer, J.H. (2007) Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences. *Journal of Research in Crime and Delinquency*. Volume:33, 4, 427-458.

<sup>14</sup> Levy-Pounds, Nekima. (2006). From the Frying Pan into the Fire: How Poor Women of Color and Children are Affected by the Sentencing Guidelines & Mandatory Minimums. *Santa Clara Law Review*.

<sup>15</sup> Bjerk, David. (2004). Making the Crime Fit the Penalty: The Roles of Prosecutorial Discretion Under Mandatory Minimum Sentencing. *Journal of Law and Economics*, Vol. 48, No. 2.

<sup>16</sup>Roberts, J.V. (2003) Public Opinion and Mandatory Sentencing. A Review of International Findings. *Criminal Justice and Behavior*. Vol. 30 No. 4. <http://cjb.sagepub.com/content/30/4/483.short>

<sup>17</sup> Ibid

<sup>18</sup> Pew Research Center, Washington D.C. (2012). Public Opinion on Sentencing and Corrections Policy in America. [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/PEW\\_NationalSurveyResearchPaper\\_FINAL.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/PEW_NationalSurveyResearchPaper_FINAL.pdf)



## IV. Historical Background of Mandatory Sentences in Iowa

Title II, subtitle A of the Violent Crime Control and Law Enforcement Act of 1994 (“Crime Act”) (Pub. L. 103-322) (42 U.S.C. §13711) established the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Program. VOI/TIS grant funds allowed states to build or expand correctional facilities to increase the bed capacity for confinement of persons convicted of Part 1 violent crimes or adjudicated delinquent for an act that, if committed by an adult, would be a Part 1 violent crime. Funds could also be used to build or expand temporary or permanent correctional facilities, including facilities on military bases, prison barges, and boot camps; to confine convicted nonviolent offenders and criminal aliens; or to free suitable existing prison space for the confinement of persons convicted of Part 1 violent crimes. From fiscal years 1996 through 2001, half of the VOI/TIS funds were made available for Violent Offender Incarceration Grants, and half were available as incentive awards to states that implemented truth-in-sentencing laws.

States receiving VOI/TIS funds were also able to award sub-grants of up to 15 percent of their award to local units of government to build or expand jails, and up to 10 percent of a state's VOI/TIS award (1) to the costs of offender drug testing or intervention programs during periods of incarceration and post-incarceration criminal justice supervision and/or (2) to pay the costs of providing the required reports on prison drug use.<sup>19</sup>

The Crime Act was passed during a time when it was becoming more accepted that a substantial percentage of serious crime is committed by a relatively small number of individual offenders<sup>20</sup>. It was thought that serious crime could be significantly reduced by incapacitating these offenders for longer periods of time. The grant funds made available through the Act provided an incentive to states to adopt this philosophy, with the federal government paying for a substantial part of the initial expenses.

The federal legislation required that certain offenders serve at least 85 percent of their maximum sentences prior to being eligible for release. Like other states, Iowa adopted the 85 percent requirement when SF1151 was passed in 1996. As a result of complying with the federal requirement, Iowa received a total of \$22,924,830 in VOI/TIS Act funds to build prisons and correctional facilities over a six-year period. Table 1 shows a breakdown of funding received between 1996 and 2001.

**Table 1: 1996-2001 VIO/TIS Funding<sup>21</sup>**

Period	Funding by Year
1996	\$1,248,453
1997	\$5,622,682
1998	\$4,216,254
1999	\$3,797,288
2000	\$3,518,579
2001	\$4,521,574

Funding for the VOI/TIS Act grants ceased after 2001 when the goals of the program had been achieved through correctional capacity expansion for offenders convicted of Part 1 violent crimes, and no other state had applied for the grants. A total of 29 states and the District of Columbia received VOI/TIS Act grants.

<sup>19</sup> Bureau of Justice Assistance U.S. Department of Justice. <http://www.ojp.usdoj.gov/BJA/grant/voitis.html>

<sup>20</sup> Hearn, N. (2010) Theory of Desistance. *Internet Journal of Criminology*.

[http://www.internetjournalofcriminology.com/Hearn\\_Theory\\_of\\_Desistance\\_IJC\\_Nov\\_2010.pdf](http://www.internetjournalofcriminology.com/Hearn_Theory_of_Desistance_IJC_Nov_2010.pdf)

<sup>21</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Report to Congress (2005) Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program.

The 85 percent requirement enacted into Iowa law in 1996 was subsequently modified in 2003, when covered inmates whose crimes were committed after July 1, 2003 were made eligible for parole release after having served 70 percent of their sentences. The following year this provision was made retroactive, so all those originally covered by the 85 percent requirement became eligible for parole at the 70 percent mark. Iowa, along with seven other states, including Arkansas, Mississippi, Montana, North Carolina, Texas and Virginia, passed similar types of legislation to combat growing prison populations and ease overcrowding.<sup>22</sup>

This change provided the Board of Parole a window between 70 percent and 85 percent during which covered inmates could be paroled or sent to work release. Thus there are two components to these “mandatory sentences” in Iowa:

- the first is the mandatory minimum sentence itself, which is currently set at 70% of the statutory maximum penalty for the applicable felonies (i.e., 7.0 years for a Class C felony and 17.5 years for a Class B felony);
- The second component is a “cap” on the amount of earned time that can be accumulated during the course of the sentence, a figure currently set at 15%. Thus, a Class B felony covered by this provision, with the accumulation of earned time, will expire at 22.5 years. A class C felony will expire in 8.5 years.

The Class C 70% inmates who have become eligible for parole since the 2003 modification have tended to be released about midway between the parole eligibility date (70 percent) and the expiration date (85 percent, assuming accrual of earned time).

The first offenders covered under the new statute began entering prison in November of 1996. The first of the Class C 70% inmates received provisional release to work release in September, 2004.<sup>23</sup> The first of the Class B 70 percent inmates will become eligible for release consideration in April, 2014.

As shown below, the least serious of the 70 percent crimes in Iowa is a Class C (10-year) felony, so the minimum term served by these offenders (barring unusual circumstances)<sup>24</sup> is 7.0 years. For further discussion of 70% sentences in Iowa, see

<http://www.legis.iowa.gov/DOCS/Central/Guides/LBB/70percent.pdf>

**Table 2: Offenses Covered by the 70% Initiative**

Code Citation	Year	Offense Description	Class	Maximum	Minimum
707.11	(1998)	Attempted Murder	B Felony	25 years	17.5 years
707.3	(1996)	Murder 2 <sup>nd</sup> Degree	B+ Felony	50 years	35 years
707.6A(1)	(2003)	Homicide by Vehicle	B Felony	25 years	17.5 years
707.6A(2)	(2003)	Homicide by Vehicle	C Felony	10 years	7.0 years
709.3	(1996)	Sex Abuse 2 <sup>nd</sup> Degree	B Felony	25 years	17.5 years
710.3	(1996)	Kidnapping 2 <sup>nd</sup> Degree	B Felony	25 years	17.5 years
711.2	(1996)	Robbery 1 <sup>st</sup> Degree	B Felony	25 years	17.5 years
711.3	(1996)	Robbery 2 <sup>nd</sup> Degree	C Felony	10 years	7.0 years
902.8,A	(1996) <sup>25</sup>	Habitual Criminal	Other Felony	15 years	10.5 years

<sup>22</sup> King, R.S. & Mauer, M. (2002). State Sentencing and Corrections Policy in an Era of Fiscal Restraint. The Sentencing Project.

<sup>23</sup> There were a handful of releases via court order (or to appeal bond), shock probation, releases to interstate compact housing, and several inmate deaths prior to this first provisional release.

<sup>24</sup> A number of inmates have died or have been released on appeal prior to expiration of the mandatory minimum. There is also one youthful offender convicted of one of these offenses who is not covered by the 70 percent provision.

<sup>25</sup> For the purpose of this report habitual criminal convictions are counted only when the underlying conviction is for an offense covered by the 70% mandatory minimum.

## V. Methodology

The purpose of this study is to examine the impact of mandatory sentences in Iowa. Data used in this analysis were derived from the Iowa Corrections Offender Network (ICON), and the Iowa Court Information System (ICIS), using the Iowa Justice Data Warehouse (JDW). This report presents three analyses. The first analysis focuses specifically on past and future impacts of mandatory sentences on the prison population. The second examines demographic differences between offenders who receive mandatory sentences and those who do not. The final analysis focuses on mandatory sentences resulting from robbery convictions, as robbery accounts for nearly half of Iowa's 70% sentences.

**Analysis #1 – The Effects of Mandatory Sentences on the Prison Population:** The initial analysis provides an historical examination of the number of new<sup>26</sup> offenders (n=1,554) entering prison on mandatory sentences from 7/1/1997-6/30/2013. This analysis also examines the growth of inmates incarcerated at the end of each fiscal year on 70% sentences. This initial analysis provides insight into the historical and expected effects of these sentences on Iowa's prison population, barring policy reform.

**Analysis #2 – Demographic Differences between Mandatory Sentence Servers and Other Inmates:**

The second analysis examines new prison admissions during FY2013 (7/1/2012-6/30/2013), focusing on demographic variables, total LSI-R risk scores, LSI-R criminal history sub-scores and prior convictions, with comparisons made between individuals serving mandatory sentences and those serving other sentences not requiring mandatory minima. This analysis compares inmates admitted to prison for non-70% terms (n=3,389) with those covered by mandatory 70% sentences (n=92).

An additional analysis is included in this section which examines similar variables between 70% servers and those not serving 70% sentences who are incarcerated on violent felony offenses. This analysis consisted of a total of 632 inmates, 540 violent felony offenders who did not receive a 70% sentence and 92 offenders who did.

**Analysis #3 – Robbery Analysis:** The final analysis focuses specifically on new offenders admitted to prison after being originally charged with robbery, with the first offender in the population entering prison on 2/13/1970 and the last on 6/29/2012. Offenders were grouped into periods based on their prison admission date by increments of five years, prior to the availability of FY13 admission data. All such offenders entering prison prior to 7/1/1990 were included in a single group. There were 3,224 offenders studied in this cohort. This more extensive analysis is presented because robbery offenders constitute such a high percentage of those entering prison under 70% sentences. Examining robbery also provides an opportunity to look at the extent to which plea negotiation occurs when offenders are faced with the possibility of a long mandatory prison sentence. Robbery is also one of the most racially disproportionate crimes in Iowa, a

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<sup>26</sup> Analysis of prison admissions and releases in Iowa typically concentrates on inmates who enter prison on charges that occurred when offenders were not under supervision for an offense for which they had previously been imprisoned. Thus, an individual returned to prison due to parole or work release revocation would not be included, while one committed directly to prison as the result of a new offense or as the result of a probation revocation would be included

crime that must certainly be addressed if racial disparity in Iowa's prison system is to be reduced.

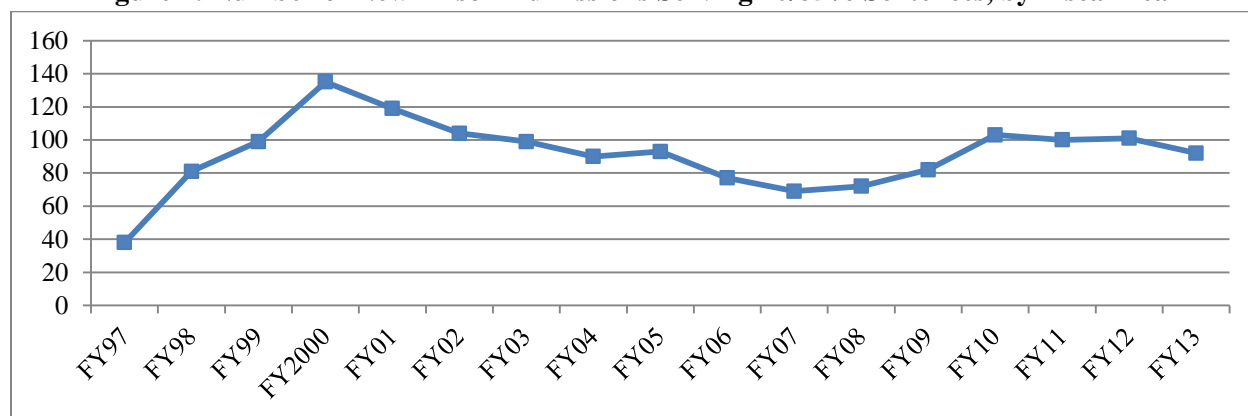
The cohort for this analysis includes all new incoming inmates whose original charges included either Robbery-1 or Robbery-2, regardless of whether the robbery was the most serious offense charged. Since 1978 Robbery-1 has carried a maximum sentence of twenty-five years, while Robbery-2 carries a ten-year maximum sentence.

The data used to generate information on court activity pertaining to robbery were derived from courts data using the Justice Data Warehouse (JDW). Because the JDW reliably goes back to 1999, data for the court processing portion of the analysis were only available for FY1999-FY2013, resulting in the inclusion of 9,047 offenders charged with robbery.

## VI. The Effects of Mandatory Sentences on the Prison Population

This section provides an historical examination of the number of new offenders (n=1,554) entering prison on 70% sentences from 7/1/1997-6/30/2013. The analysis also examines the fluctuation of inmates incarcerated at the end of each fiscal year on 70% sentences, thus providing insight into the historical and expected effects of these sentences on Iowa's prison population, barring policy reform.

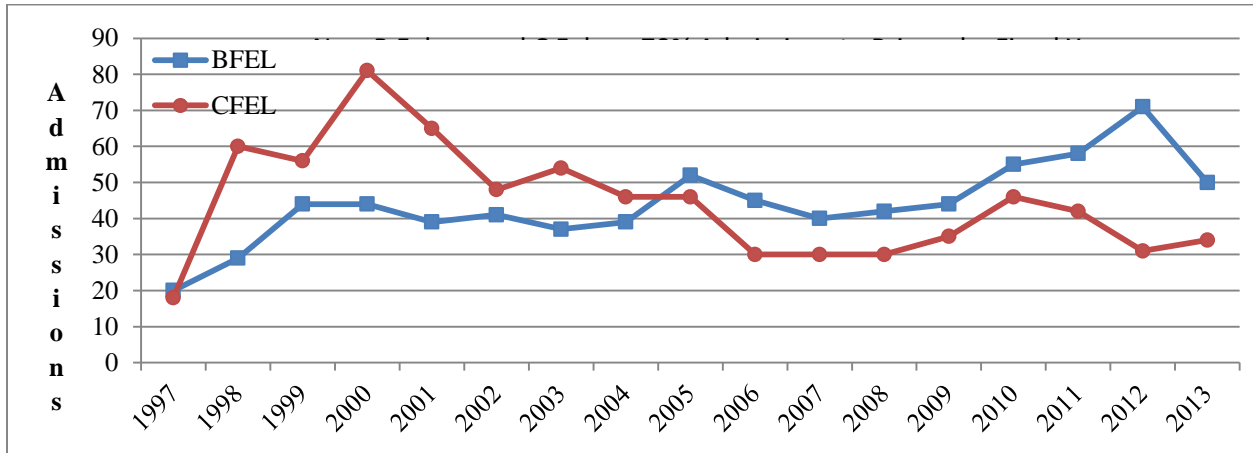
**Figure 1: Number of New Prison Admissions Serving 70/85% Sentences, by Fiscal Year**



The number of new prison admissions entering prison on 70/85% sentences increased rapidly following their implementation in FY1997, peaking in FY2000. From FY2000-FY2007 admissions steadily declined from about 140 new inmates to about 60. For the last four fiscal years, the number of new prison admissions entering prison with 70% mandatory sentences has remained relatively stable at around 100 new prison admissions annually.

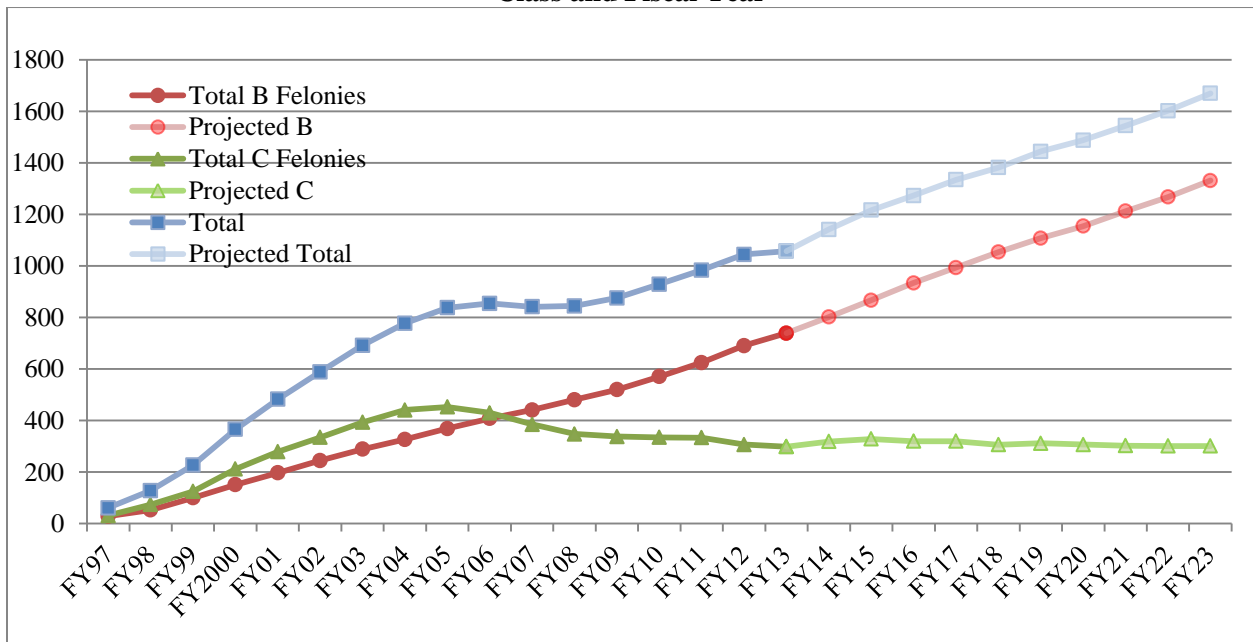
Figure 2 breaks this figure down by offense class, showing the number of new B and C Felony 70% admissions to prison FY1997-2013. The chart shows a rapid escalation of admissions for Class C 70% inmates in the early years of the VOITIS initiative, as might be expected. The slower rise in admissions of Class B felons is also not surprising, in that the lengthier mandatory minimum for Class B felons probably resulted in a lengthier adjudication process due to a reduced likelihood of guilty pleas. What is surprising in the chart is the increase in admissions of Class B 70% felons during 2009-2012, and the drop in Class C 70% admissions since FY2000-2001. Further analysis showed that the increase in Class B admissions is coming from Iowa's metropolitan counties, which typically account for more than 50% of the State's admissions for 70% crimes. FY13 Robbery-1 admissions dropped after the FY12 peak, so it is unclear if the 2012 is evidence of a new trend or an anomaly.

**Figure 2: Number of New Prison Admissions Serving 70/85% Sentences, by Offense Class and Fiscal Year**



The figure below shows the result of these admissions of 70% inmates to Iowa's prisons, as it provides historical data on the number of these inmates in the population each June 30, along with a projection through FY2023. When observing the total number of only Class B and C 70% felonies we can see a gradual increase from FY1997 through FY2013 with a projected increase in the number of prisoners from FY2013 through FY2023 from about 1,000 to 1,600 inmates.

**Figure 3: Actual and Projected Inmates in Prison Population Serving 70/85% Sentences, by Offense Class and Fiscal Year**



The number of 70% C felons in the prison population increased from FY1997 through FY2005 but has declined in recent years due to a drop in admissions and a rise in releases. The number of inmates serving 70% Class C felonies is expected to remain stable from FY2013 through FY2023 at 300-400 inmates.

The number of 70% B felons has increased steadily since the first such inmate was admitted in FY1997. Because this first inmate will reach his mandatory minimum date in FY14, the number of these Class B

inmates is expected to continue rising at least through 2023. The point at which this population is expected to level off will depend on the extent to which the group either receives discretionary release (via parole or work release) or remains in prison until expiration. Any changes in the number of new offenders entering prison on 70% B felonies will undoubtedly have a substantial correctional and fiscal impact in due to the 17.5-year mandatory minimum sentence. Note that all the expected increase in 70% inmates results from a continued rise in Class B 70% inmates in the population. It should also be said that the number of Class B inmates projected to be in the population is higher than estimated two years ago due to an increase in admissions.

Another way to assess the effect of these mandatory-minimum inmates on the prison population is to examine the extent to which the total inmate population includes individuals not eligible for discretionary release. In recent years in Iowa, as elsewhere, there has been an increasing willingness to use pre- or post-prison alternatives to keep rises in population in check. Given Iowa's largely indeterminate sentencing structure, there are limited ways to control the size of the prison population:

- Judges can exercise discretion in sending fewer offenders to prison; or
- Discretionary release of inmates can occur after shorter lengths-of-stay.

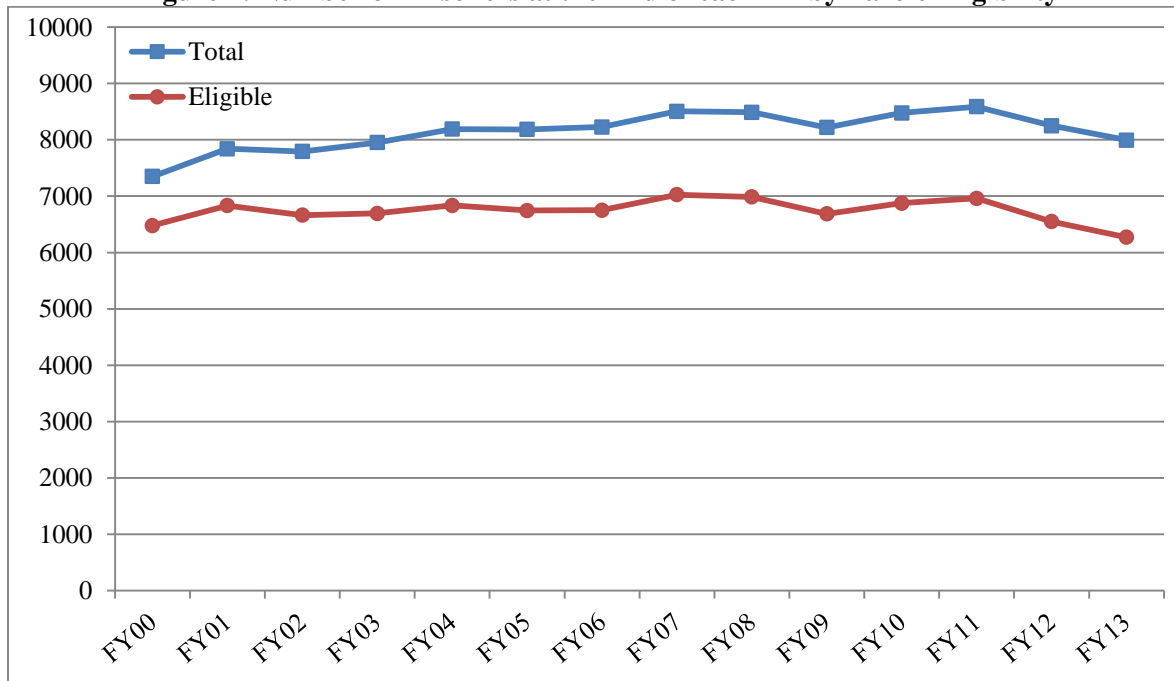
Shortening length-of-stay in Iowa is largely a policy issue dependent on actions of the Board of Parole, but also depends on the size of the population from which the Board may select in granting early release. In that vein, Figure 4 was prepared, which shows Iowa's end-of-year inmate population since FY2000, breaking out inmates theoretically eligible for release and those not so eligible.

The figure includes only inmates serving sentences in Iowa's prison, excluding those in the (former) Violator Program, safekeepers, those on county jail holds, and those serving sentences under the Interstate Compact. Note that while there were rises and falls in the "eligible" inmates (the red line), their number at the end of FY13 were almost identical to the number in FY2000. The space between the blue and red lines represents the "non-eligible" group, which includes those serving mandatory 70% sentences and "lifers".<sup>27</sup> This group has grown as the prison population rose from FY2000 to FY2013.

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<sup>27</sup> Of the 742-inmate increase in the "non-eligible" group, 157 were lifers. CJPJ has forecasted a decrease in that population in the next decade.

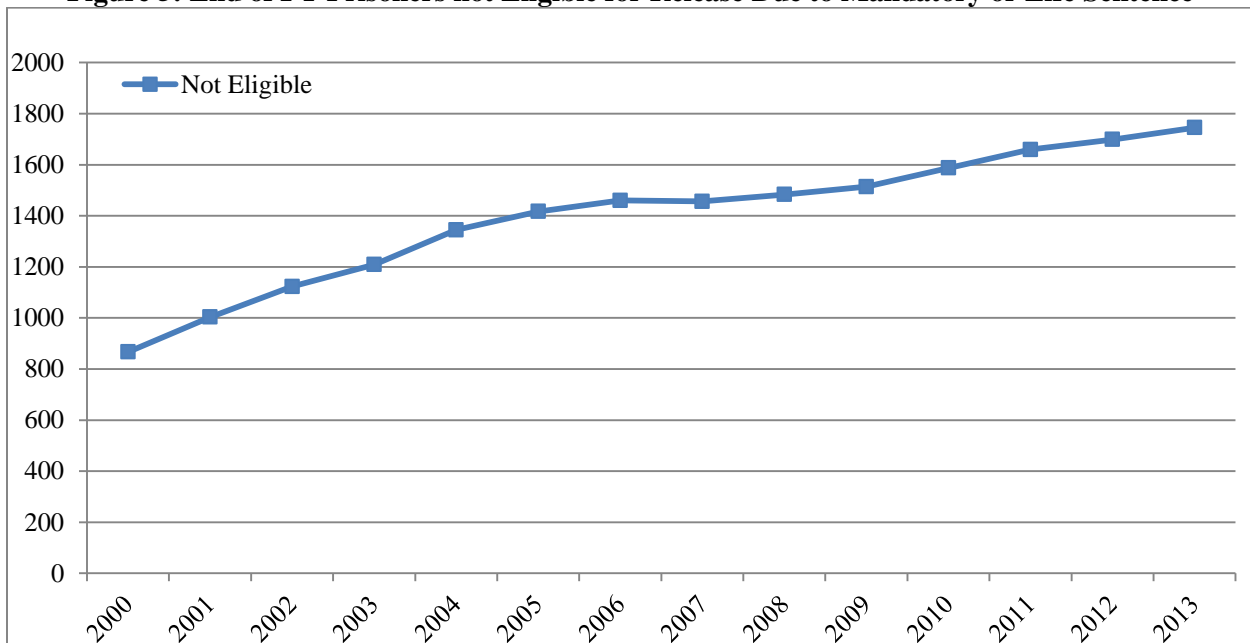
**Figure 4: Number of Prisoners at the End of each FY by Parole Eligibility**



Note, too, that the “not eligible” group in the chart (and the table below) is an under-representation of those not eligible for release consideration, as it does not include non-70% mandatory minimum terms (principally those served by drug offenders). These minima are typically considerably shorter than those served by 70% inmates.

The next chart simply shows the growth in the “not eligible” group over the 12-year period. As noted above, this group is expected to continue increasing at least through 2021, barring changes in statutory requirements pertaining to the 70% mandatory minimum.

**Figure 5: End of FY Prisoners not Eligible for Release Due to Mandatory or Life Sentence**





**Table 3: Number of Prisoners at the End of each Fiscal Year by Release Eligibility**

FY	Eligible	Not-Eligible	NA <sup>28</sup>	Total (Not including NA)	Total
FY00	6,480	872	294	7,352	7,646
FY01	6,835	1,008	260	7,843	8,103
FY02	6,663	1,132	347	7,795	8,142
FY03	6,694	1,259	408	7,953	8,361
FY04	6,836	1,355	411	8,191	8,602
FY05	6,745	1,441	391	8,186	8,577
FY06	6,751	1,478	429	8,229	8,658
FY07	7,028	1,477	302	8,505	8,807
FY08	6,988	1,500	252	8,488	8,740
FY09	6,686	1,534	233	8,220	8,453
FY10	6,876	1,603	123	8,479	8,602
FY11	6,963	1,627	197	8,590	8,787
FY12	6,551	1,699	83	8,250	8,333
FY13	6,273	1,745	83	7,995	8,078

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<sup>28</sup> “NA” includes Violator Program participants, county jail holds, safekeepers, and Interstate Compact prisoners.

## VII. Demographic Differences between Mandatory Sentence Servers and Other Inmates

This section provides an overview of demographic differences and similarities between offenders serving 70% mandatory sentences and those who do not. In order to provide the most up-to-date comparison, this analysis includes only FY2013 new prison admissions. There were 3,481 new admissions in FY2013, with 3,389 entering prison on non-70% mandatory sentences and 92 on 70% sentences. The greatest proportion (42.4%) of this population was incarcerated on Class D felonies as the most serious commitment offense, but 22-23% were also incarcerated on either Class C felonies or aggravated misdemeanors.

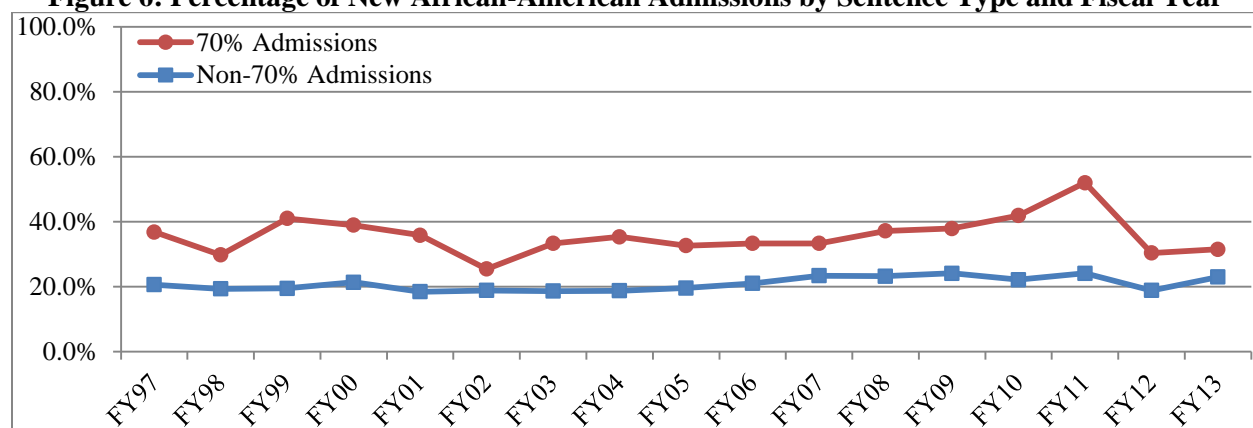
**Table 4: FY13 New Prison Admissions, by Conviction Offense Class**

	Non-70%		70%		Total	
	N	%	N	%	N	%
A Felony	11	0.3%	0	0.0%	11	0.3%
B Felony	113	3.3%	50	54.3%	163	4.7%
C Felony	765	22.6%	34	37.0%	799	22.9%
D Felony	1,477	43.6%	0	0.0%	1,477	42.4%
Other Felony	180	5.3%	8	8.7%	188	5.4%
Aggravated Misdemeanor	777	22.9%	0	0.0%	777	22.3%
Serious Misdemeanor	28	0.8%	0	0.0%	28	0.8%
Other Misdemeanor	1	0.0%	0	0.0%	1	0.0%
Special Sentence <sup>29</sup>	37	1.1%	0	0.0%	37	1.1%
Total	3,389	100%	92	100%	3,481	100%

### Race

African-Americans are generally over-represented in Iowa's prison population (African-Americans constitute about 2.9 percent of Iowa's population), but they are even more disproportionately represented in the 70% mandatory sentence group. In FY13, 23.0% of the new prison admissions were African-American, while 31.5% of the 70% felons were of this racial group. Statistical analysis found that these differences failed to reach statistical significance.

**Figure 6: Percentage of New African-American Admissions by Sentence Type and Fiscal Year**



<sup>29</sup> Special sentence admissions are counted as “new” only when their original sex offense sentence did not involve imprisonment.

***Gender***

The majority (86.4%) of offenders admitted to Iowa's prisons in FY2013 were male. Males were even more likely to be admitted on 70% sentences (95.7% were male while 4.3% were female). The difference in male percentages of 70% sentences and non-70% sentences was significant at the 95% confidence level.

***Age at Prison Entrance***

The highest percentage of prison admissions was found for offenders aged 19-25 (30.3%). The median age, regardless of sentence type, was 30 years. Imprisoned offenders 18-and-under were significantly more likely to have been committed on of 70% crimes than other groups (18.5% vs. 3.4). Offenders 41-50 had lower rates of 70% sentences without reaching statistical significance.

***Education***

There were no significant differences in education between the mandatory and non-mandatory sentence groups. A large percentage of offenders had obtained their GED (26.2%) or High School diploma (25.9%). However, the largest group of offenders had not completed High School or obtained their GED (34.1%).

***Birthplace***

Iowa's largely-Caucasian demography is illustrated in prison admissions, as most white Iowa prison admissions were born in Iowa, while most black admissions were born elsewhere. Inmates born in Iowa were more likely to be serving a non-70% sentence (60.9% vs. 54.3%) while inmates born elsewhere were more likely to be serving a 70% sentence (42.4% vs. 35.4%). Further evidence finds that, of inmates not born in Iowa, greater percentages of African-Americans are serving 70% sentences compared to Caucasians (58.6% vs. 36.1%). Also, white, Iowa-born inmates are more likely to be serving non-70% than 70% sentences (68.6% vs. 60.6%).

**Table 5: FY13 New Prison Admission Population, by Sentence Type, Race, Sex, Age, Birthplace**

	Non-70% Sentence		70% Sentence		Total	
	N	%	N	%	N	%
<b>Race</b>						
Caucasian	2,526	74.5%	61	66.3%	2,587	74.3%
African-American	779	23.0%	29	31.5%	808	23.2%
Other	84	2.5%	2	2.2%	86	2.5%
<b>Sex</b>						
Male*	2,919	86.1%	88	95.7%	3,007	86.4%
Female*	470	13.9%	4	4.3%	474	13.6%
<b>Age</b>						
18 and Under*	115	3.4%	17	18.5%	132	3.8%
19-25	1,029	30.4%	27	29.3%	1,056	30.3%
26-30	583	17.2%	12	13.0%	595	17.1%
31-40	865	25.5%	20	21.7%	885	25.4%
41-50	532	15.7%	9	9.8%	541	15.5%
51 and Older	265	7.8%	7	7.6%	272	7.8%
<b>Education</b>						
College Degree	55	1.6%	0	0.0%	55	1.6%
Technical/Trade	57	1.7%	1	1.1%	58	1.7%
Some College	35	1.0%	0	0.0%	35	1.0%
GED	891	26.3%	22	23.9%	913	26.2%
HS Diploma	881	26.0%	20	21.7%	901	25.9%
Did not Complete HS	1,153	34.0%	33	35.9%	1,186	34.1%
Unknown	317	9.3%	16	17.4%	333	09.6%
<b>Birthplace</b>						
Iowa	2,064	60.9%	50	54.3%	2,114	60.7%
Other	1,200	35.4%	39	42.4%	1,239	35.6%
Unknown	125	3.7%	3	3.3%	128	3.7%
<b>Total</b>	<b>3,389</b>	<b>100%</b>	<b>92</b>	<b>100%</b>	<b>3,481</b>	<b>100%</b>

\*Significant at a 95% confidence interval.

**Table 6: FY13 Caucasian and African-American New Prison Admissions by Birthplace**

	Non-70% Sentence		70% Sentence		Total	
Caucasian	N	%	N	%	N	%
Iowa	1,732	68.6%	37	60.6%	1,769	68.4%
Other	710	28.1%	22	36.1%	732	28.3%
Blank	84	3.3%	2	3.3%	86	3.3%
Total	2,526	100%	61	100%	2,587	100%
African-American						
Iowa	293	37.6%	11	37.9%	304	37.6%
Other	467	59.9%	17	58.6%	484	59.9%
Blank	19	2.4%	1	3.4%	20	2.5%
Total	779	100%	29	100%	808	100%

**Offender Risk (LSI-R)**

Substantial discussion has taken place regarding the risk of offenders serving mandatory sentences. Advocates for mandatory sentences argue that offenders serving mandatory terms pose more of a criminal risk compared to other prisoners. To examine this contention, LSI-R scores were compared between the 70% sentence group and non-70% sentence admissions.

The LSI-R total score assesses a wide range of criminogenic and social factors (such as criminal history, education, employment, finances, family living situation, recreation, social situation, drug problems, and attitudes) and has been shown to be a good predictor of criminal risk leading to a new conviction or prison return.<sup>30</sup> While not all prison admissions have current<sup>31</sup> LSI-R scores at entry to prison, there are sufficient numbers to allow a comparison of LSI-R scores of those committed for 70% crimes and those committed for other crimes. About 92% of the cohort possessed a current LSI score at admission.

**Table 7: FY13 New Prison Admission Population, by Sentence Type and LSI-R Total Score**

	Non-70% Sentence		70% Sentence		Total	
LSI-R Total Score	N	%	N	%	N	%
Low Risk (01-13)	37	1.2%	1	1.1%	38	1.2%
Low-Moderate (14-23)*	210	6.7%	18	20.2%	228	7.1%
Moderate (24-33)	937	29.9%	35	39.3%	972	30.2%
Moderate-High (34-40)*	1,226	39.2%	25	28.1%	1,251	38.9%
High (41-47)*	720	23.0%	10	11.2%	730	22.7%
Total	3,130	100%	89	100%	3,219	100%

\* Significant at a 95% confidence interval.

A greater proportion of offenders serving non-70% sentences had significantly higher LSI-R moderate-high risk (39.2 % vs. 28.1%) and high risk scores (23.0% vs. 11.2%) than the 70% group. Similarly, offenders serving 70% sentences scored low-moderate at significantly higher rate (20.2% vs. 6.7%). The 70% sentence group also showed a lower median LSI-R score (32) than other admissions (36). Findings from this analysis suggest that offenders serving mandatory sentences tend to have lower risk scores at prison entry than those not serving such mandatory sentences.

<sup>30</sup> Division of Criminal and Juvenile Justice Planning. (2011) Outcome of Mandatory Minimum Sentences for Drug Traffickers.

<sup>31</sup> LSI Scores are regarded as current for the purposes of this analysis if they were completed within 180 of prison entry or within 60 days after admission.

### ***Criminal History***

Mandatory sentence advocates argue that mandatory sentences are justified because they provide appropriate sanctions for offenders who have passed through the “revolving door” of the justice system numerous times. This section examines this contention by comparing the LSI-R criminal history sub-score and the number of prior convictions between the 70% and non-70% group.

The LSI-R criminal history sub-score is a component of the LSI-R assessment which specifically assesses criminal history. One component of this domain is an offender’s number of prior convictions. As previously stated, LSI-R’s were not available on some offenders, which also limited the number of offenders available for this analysis. Nevertheless, criminal history sub-scores were available for 3,032 offenders and prior convictions were available for 2,772.

An analysis of the LSI-R criminal history sub-score indicated that offenders serving 70% sentences had significantly higher percentages of low sub-scores, scoring between 0-3 (32.5% vs. 9.3%). Offenders serving non-70% sentences had significantly higher percentages of high sub-scores, scoring from 7-10 (57.6% vs. 33.8%). That the 70% group possesses a less extensive criminal history is not surprising, as these offenders have been incarcerated primarily based upon the severity of their current offense. Non-violent offenders, on the other hand, are frequently imprisoned due to the weight of an extensive criminal history.

**Table 8: Criminal History LSI-R Sub-Score, FY13 New Prison Admissions, by Sentence Type**

LSI-R Criminal History Sub-Score	Non-70% Sentence		70% Sentence		Total	
	N	%	N	%	N	%
0-3*	275	9.3%	25	32.5%	300	9.9%
4-6	979	33.1%	26	33.8%	1,005	33.1%
7-10*	1,701	57.6%	26	33.8%	1,727	57.0%
Total	2,955	100%	77	100%	3,032	100%

*\* Significant at a 95% confidence interval.*

**Table 9: Prior Convictions, FY13 New Prison Admissions, by Sentence Type**

Prior Convictions	Non-70% Sentence		70% Sentence		Total	
	N	%	N	%	N	%
0	122	4.5%	7	11.1%	129	4.6%
1*	233	8.6%	13	20.6%	246	8.9%
2-3	492	18.2%	16	25.4%	508	18.3%
4-6	607	22.4%	12	19.0%	619	22.3%
7 or more *	1,255	46.3%	15	23.8%	1,270	45.8%
Total	2,709	100%	63	100%	2,772	100%

*\*Significant at a 95% confidence interval.*

Offenders serving 70% sentences had higher rates of prior convictions in categories 0, 1, 2-3, and significantly higher rates of one prior conviction (20.6% vs. 8.6%) compared to the non-70% group. Offenders serving non-mandatory sentences exhibited significantly higher amounts of 7 or more prior convictions (46.3% vs. 23.8%). This is further illustrated by the higher median number of convictions for the non-70% group (6.0 vs. 3.0).

These findings do not support the assumption that offenders serving 70% sentences have more extensive criminal histories and are passing through the ‘revolving justice system door’ at higher rates than those not serving mandatory sentences.

## VIII. Demographic Differences between Mandatory Sentence Servers and Violent Felony Inmates

The previous analysis raised questions concerning demographic, LSI-R, and criminal history differences between 70% admissions and all other new admissions to Iowa's prison in FY2013. This next section examines differences between 70% admissions and the cohort of offenders incarcerated on *violent felony offenses* (including sex offenders) who were not admitted on 70% sentences. Included in this comparison are 632 offenders admitted to prison in FY2013.

**Table 10: FY13 New Crimes Against Persons Felony Prison Admissions, by Conviction Offense Class**

	Violent Non-70% Sentence		Violent 70% Sentence		Total	
	N	%	N	%	N	%
A Felony	11	2.0%	0	0.0%	11	1.7%
B Felony	37	6.8%	50	54.3%	87	13.8%
C Felony	226	41.8%	34	37.0%	260	41.1%
D Felony	260	48.1%	0	0.0%	260	41.1%
Other Felony	6	1.1%	8	8.7%	14	2.2%
Total	540	100%	92	100%	632	100%

### *Race*

About seventy-two percent of offenders admitted to prison in FY2013 for violent felony offenses were Caucasian, 25.3% were African-American, and 2.5% were of other races. A higher percentage of African-Americans admitted for violent offenses were serving 70% sentences versus non-70% sentences (31.5% vs. 24.3%), but this finding failed to reach statistical significance. A slightly higher percentage of Caucasians admitted to prison on violent offenses were incarcerated for non-70% sentences (73.1% vs. 66.3%).

### *Gender*

The majority of offenders admitted to prison in FY2013 for violent felony offenses were male (93.2%) and 6.8% were female. Of those serving 70% sentences, 95.6% were male while 4.3% were female. Men were over-represented among those serving 70% sentences (95.6% vs. 92.8%), while a significantly higher percentage of women were serving non-70% sentences (7.2% vs. 4.3%).

### *Age at Prison Entrance*

The highest percentage of violent prison admissions were offenders aged 19-25 (37.5%). Offenders age 18 and under were significantly more likely to be admitted for 70% crimes (18.5% vs. 6.7%) and offenders age 26 through 30 had lower rates of prison admissions on 70% sentences (13.0% vs. 16.7%), although the latter finding failed to reach statistical significance.

### *Education*

There were no significant differences between the 70% sentence and comparison group in regards to education. The greatest percentage of offenders had obtained their GED (19.1%) or High School Diploma (28.3%). About 34.8% percent of offenders had not completed high school or obtained their GED.

### *Birthplace*

As was true above, Caucasian inmates were likely to have been born in Iowa, regardless of their 70% status, and African-Americans were more likely to have been born elsewhere. Violent felony offenders born in Iowa were more likely to be serving a non-70% sentence (57.4% vs. 54.3%) while inmates not born in Iowa were more likely to be serving a 70% sentence (42.4% vs. 37.4%). Further exploration of



this relationship provides an interesting finding; Whites who were not born in Iowa are more likely to be serving a 70% sentence (36.1% vs. 30.6%) while African-Americans who were not born in Iowa are equally likely to be serving a 70% or non-70% sentence (58.6% vs. 58.8%). However, white Iowans are more likely to be serving a non-70% sentence (64.5% vs. 60.6%) while black Iowans are slightly more likely to serve a 70% sentence (37.9% vs. 36.6%). These findings failed to reach significance.

**Table 11: FY13 New Violent Felony Prison Admissions, by Sentence Type, Race, Sex, Age and Birthplace**

	Violent Non-70%		Violent 70%		Total	
	N	%	N	%	N	%
<b>Race</b>						
Caucasian	395	73.1%	61	66.3%	456	72.1%
African-American	131	24.3%	29	31.5%	160	25.3%
Other	14	2.6%	2	2.2%	16	2.5%
<b>Sex</b>						
Male	501	92.8%	88	95.6%	589	93.2%
Female	39	7.2%	4	4.3%	43	6.8%
<b>Age</b>						
18 and Under*	36	6.7%	17	18.5%	53	8.4%
19-25	210	38.9%	27	29.3%	237	37.5%
26-30	90	16.7%	12	13.0%	102	16.1%
31-40	114	21.1%	20	21.7%	134	21.2%
41-50	57	10.5%	9	9.8%	66	10.4%
51 and Older	33	6.1%	7	7.6%	40	6.3%
<b>Education</b>						
College Degree	13	2.4%	0	0.0%	13	2.1%
Technical/Trade	8	1.5%	1	1.1%	9	1.4%
Some College (No Degree)	4	0.7%	0	0.0%	4	0.6%
GED	99	18.3%	22	23.9%	121	19.1%
HS Diploma	159	29.4%	20	21.7%	179	28.3%
Did not Complete HS	187	34.6%	33	35.9%	220	34.8%
Unknown	70	13.0%	16	17.4%	86	13.6%
<b>Birth Place</b>						
Iowa	310	57.4%	50	54.3%	360	57.0%
Other	202	37.4%	39	42.4%	241	38.1%
Blank	28	5.2%	3	3.3%	31	4.9%
<b>Total</b>	<b>540</b>	<b>100%</b>	<b>92</b>	<b>100%</b>	<b>632</b>	<b>100%</b>

*\*Significant at a 95% confidence interval*

**Table 12: FY13 New Prison Admissions, by Race and Birthplace**

	Violent Non-70% Sentence		Violent 70% Sentence		Total	
	N	%	N	%	N	%
Caucasian						
Iowa	255	64.5%	37	60.6%	292	64.0%
Other	121	30.6%	22	36.1%	143	31.4%
Blank*	19	4.8%	2	3.3%	21	4.6%
Total	395	100%	61	100%	456	100%
African-American	N	%	N	%	N	%
Iowa	48	36.6%	11	37.9%	59	36.9%
Other	77	58.8%	17	58.6%	94	58.7%
Blank*	6	4.6%	1	3.4%	7	4.4%
Total	131	100%	29	100%	160	100%

\*Significant at a 95% confidence interval.

### **Offender Risk (LSI-R)**

Violent felony offenders not serving 70% sentences had higher percentages of moderate-high (31.5% vs. 28.1%) and high risk scores (17.8% vs. 11.2%) than the 70% group, although these findings failed to reach significance. The most substantial difference between the two groups was seen in the moderate category, with 39.3% of the 70% sentence offenders found in this group, compared to 31.7% of the non-70% group.

**Table 13: FY13 New Violent Prison Admissions' LSI-R Total Score, by Sentence Type**

	Violent Non-70% Sentence		Violent 70% Sentence		Total	
	N	%	N	%	N	%
LSI –R Total Score						
Low Risk (01-13)	23	4.6%	1	1.1%	24	4.1%
Low-Moderate (14-23)	72	14.4%	18	20.2%	90	15.2%
Moderate (24-33)	159	31.7%	35	39.3%	194	32.9%
Moderate-High (34-40)	158	31.5%	25	28.1%	183	31.0%
High (41-47)	89	17.8%	10	11.2%	99	16.8%
Total	501	100%	89	100%	590	100%

\* Significant at a 95% confidence interval.

While the previous analysis indicated that LSI-R total scores significantly differed between the 70% group and the general prison population, restricting the population to violent felony offenders produced relatively little difference in LSI-R total score when comparing the mandatory sentence and non-mandatory sentence groups. Median LSI scores were 32 for the 70% group and 33 for the non-70% group.

Offenders serving 70% sentences have significantly higher percentages of low sub-scores compared to the non-70% sentence group, scoring between 0-3 (32.5% vs. 19.9%). Offenders not serving mandatory sentences had higher percentages of high sub-scores compared to the 70% group, scoring from 7-10 (44.8% vs. 33.8%). These differences did not reach statistical significance.

**Table 14: FY13 Violent Prison Admissions, by Sentence Type and LSI-R Criminal**

LSI-R Criminal History Sub-Score	Violent Non-70%		70% Sentence		Total	
	N	%	N	%	N	%
0-3*	92	19.9%	25	32.5%	117	21.7%
4-6	163	35.3%	26	33.8%	189	35.1%
7-10	207	44.8%	26	33.8%	233	43.2%
Total	462	100%	77	100%	539	100%

\* Significant at a 95% confidence interval.

### ***Prior Convictions***

While findings from the previous analysis indicate that mandatory sentence servers have significantly lower criminal history sub-scores and prior convictions, this analysis finds that when one restricts the comparison population to inmates only serving non-70% sentence violent offenses, significance for most categories is lost, although minor differences remain. Offenders serving mandatory sentences had slightly higher percentages of prior convictions in categories 0, 1, and 2-3. Offenders having 7 or more prior convictions were significantly more likely to be in the non-70% group (37.3% vs. 24.1%). Median prior convictions for the 70% group was three and for the non-70% group was four.

**Table 15: FY13 New Violent Prison Admissions, by Sentence Type and Prior Convictions**

Prior Convictions	Violent Non-70% Sentence		Violent 70% Sentence		Total	
	N	%	N	%	N	%
0	33	8.8%	7	13.0%	40	9.4%
1	46	12.3%	9	16.7%	55	12.9%
2-3	84	22.5%	15	27.8%	99	23.2%
4-6	71	19.0%	10	18.5%	81	19.0%
7 or more*	139	37.3%	13	24.1%	152	35.6%
Total	373	100%	54	100%	427	100%

\*Significant at a 95% confidence interval.

## IX. Robbery Analysis

### *Reported Crime*

In theory, the Violent Offender Initiative (VOI) should have an impact on crime both from the standpoint of increased incapacitation of violent criminals and deterrence due to the potential for lengthy incarceration stemming from the covered violent acts. It should be possible to measure the impact of the provisions by monitoring the extent to which acts covered by the increased penalties change over a period of time. The good news is that, due to their seriousness, the acts covered by these enhanced penalties are sufficiently serious to be reported to law enforcement most of the time. The bad news is that there remain some acts that are not reported to the police and that not all police agencies have reported Uniform Crime Report (UCR) data to the Iowa Department of Public Safety throughout the period in question. On the other hand, if UCR data are used to estimate the incidence of these offenses, there is no reason to think that changes in reporting for the covered offenses would be different from changes in similar offenses not so covered.

In the absence of regular victimization surveys, the one vehicle available to test the possible deterrent effect of criminal sanctions is Uniform Crime Reports. The FBI established its national UCR program in 1929.<sup>32</sup> In the early years of the program all departments submitted reports directly to the FBI, a practice that was changed many years later as states themselves established programs in their state law enforcement agencies. Iowa established its state UCR program in the Department of Public Safety (DPS) in 1975. As currently established, all UCR data from Iowa are submitted to the FBI through the DPS, which has a network of approximately 240 agencies from which it accepts data directly. Agencies too small to report their own UCR data submit information through county sheriffs.

A significant change in UCR reporting in Iowa took place in 1991, when the DPS moved from the historical “summary-based” reporting system to an “incident-based” system (or IBR). Some local agencies did not have the resources to make the transition, the result being a reduction in reporting in the early 90’s that yielded incomplete statewide figures. In the analysis of the impact of mandatory minimum sentences, data are only presented here going back to 1995, by which time UCR statewide reporting had nearly reached the level of the pre-IBR summary-based system.

That said, relying on UCR data to assess the impact of criminal sanctions remains problematic, as the UCR contains only crimes reported to law enforcement. Fortunately, most of the crimes examined here tend to be among those reported to police most frequently, as they are sufficiently serious to cause victims to seek justice system intervention.

As a vehicle to assess the impact of Iowa’s 70% sentences, the UCR data are also less than perfect because, although robbery in Iowa is always a 70% charge, some aggravated assaults and some rape charges (as defined by UCR) also carry the 70% mandatory minimum, so a “pure” comparison of 70% vs. non-70% crimes is not possible. Thus, while there may be some utility in examining UCR data to assess the impact of mandatory sentences, doing so is not without its problems.

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<sup>32</sup> <http://www.fbi.gov/about-us/cjis/ucr/ucr>

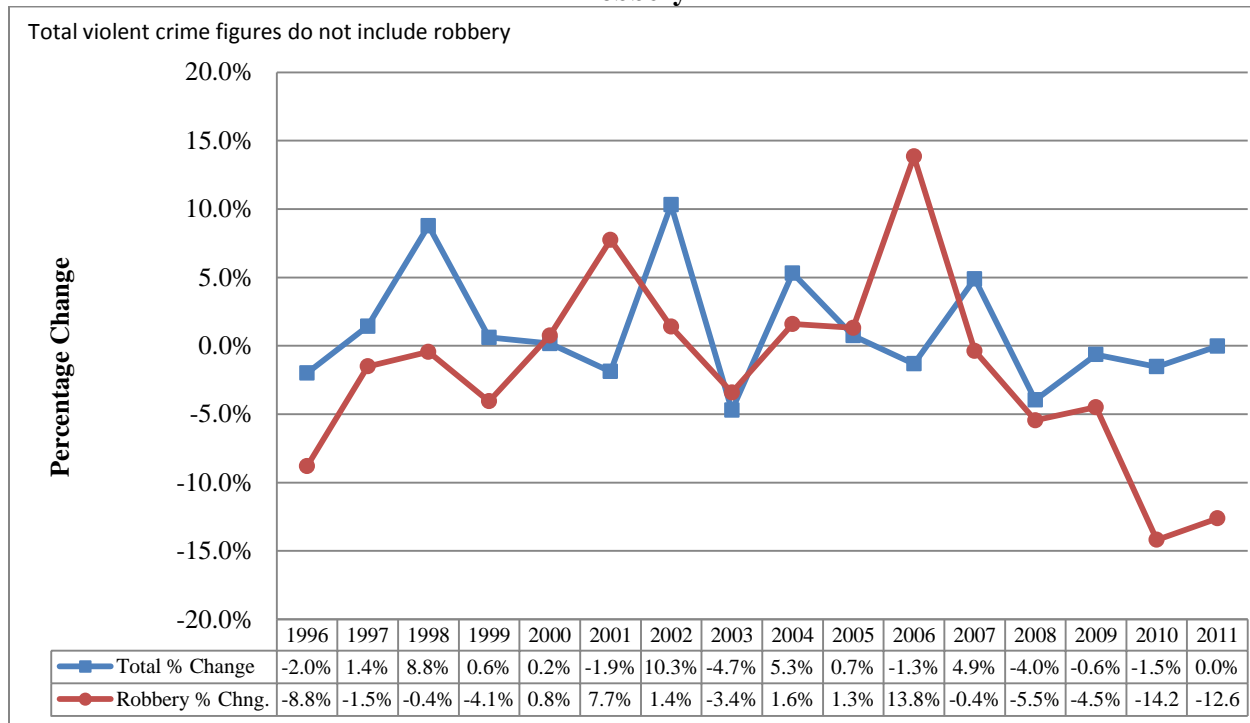
**Table 16: Part A Violent Crimes Reported to Iowa Uniform Crime Reports 1995-2011**

Year	Homicide	Kid-napping	Aggravated Assault	Forcible Rape	Total	Total % Change	Robbery	Robbery % Change
1995	55	142	5,594	505	6,296		1,239	
1996	60	150	5,431	530	6,171	-2.0%	1,130	-8.8%
1997	46	112	5,573	528	6,259	1.4%	1,113	-1.5%
1998	66	128	5,910	704	6,808	8.8%	1,108	-0.4%
1999	48	132	5,851	818	6,849	0.6%	1,063	-4.1%
2000	58	169	5,958	675	6,860	0.2%	1,071	0.8%
2001	50	136	5,882	663	6,731	-1.9%	1,154	7.7%
2002	50	166	6,399	810	7,425	10.3%	1,170	1.4%
2003	51	155	6,108	761	7,075	-4.7%	1,130	-3.4%
2004	45	193	6,435	778	7,451	5.3%	1,148	1.6%
2005	42	178	6,720	566	7,506	0.7%	1,163	1.3%
2006	59	208	6,232	908	7,407	-1.3%	1,324	13.8%
2007	38	227	6,544	960	7,769	4.9%	1,319	-0.4%
2008	76	195	6,259	931	7,461	-4.0%	1,247	-5.5%
2009	39	216	6,281	877	7,413	-0.6%	1,191	-4.5%
2010	43	224	6,119	913	7,299	-1.5%	1,022	-14.2%
2011	50	182	6,125	834	7,296	-0.0%	893	-12.6%
Change	-9.1%	28.2%	9.5%	85.9%	15.9%		-27.9%	

Source: Iowa Department of Public Safety

The table shows that, over time, reports of non-robbery violent crimes increased by 15.9 percent, while robbery reports dropped 27.9 percent. Nearly all the decrease in reported robberies occurred between FY2006 and FY2011. Note that for the most numerous crimes – aggravated assault, rape, and robbery – the peak numbers occurred between 2005 and 2007, with decreases noted since that time. These peaks occurred long after establishment of the 70% sentences in Iowa, so any causal link between the decreases in reported crime and the mandatory terms is tenuous at best. It is evident, however, that the decrease in reported robberies since 2006 is much more substantial than the other violent crimes. Year-to-year changes are shown below:

**Figure 7: Total Reported Violent Crime, % Change from Previous Year, Violent Crime versus Robbery**



The graph suggests that there has certainly been a more substantial change in robberies than other offenses, but that this change has occurred since FY2006, long after establishment of 70% sentences in the state. From FY1995 through FY2006 there was no clear pattern in rate changes either for robbery or the other Part I violent offenses. This suggests that the 70% sentences in Iowa have had little, if any, effect on the incidence of the covered crimes in the state.

### ***Robbery Adjudication***

To provide a more detailed description about the ways in which robbery charges are adjudicated, variations in adjudication practices were examined over time for Robbery-1 and Robbery-2. The data available for this analysis were derived from the Iowa Court Information System (ICIS) through the Justice Data Warehouse (JDW). Since the JDW contains data which reliably go back to 1999, only the 9,047 robbery charges during the period FY1999-2013 are examined here. Charge reduction will also be examined later under the section analyzing robbers sent to prison.

**Figure 8: Total Robbery Charges and Dispositions, by Fiscal Year**

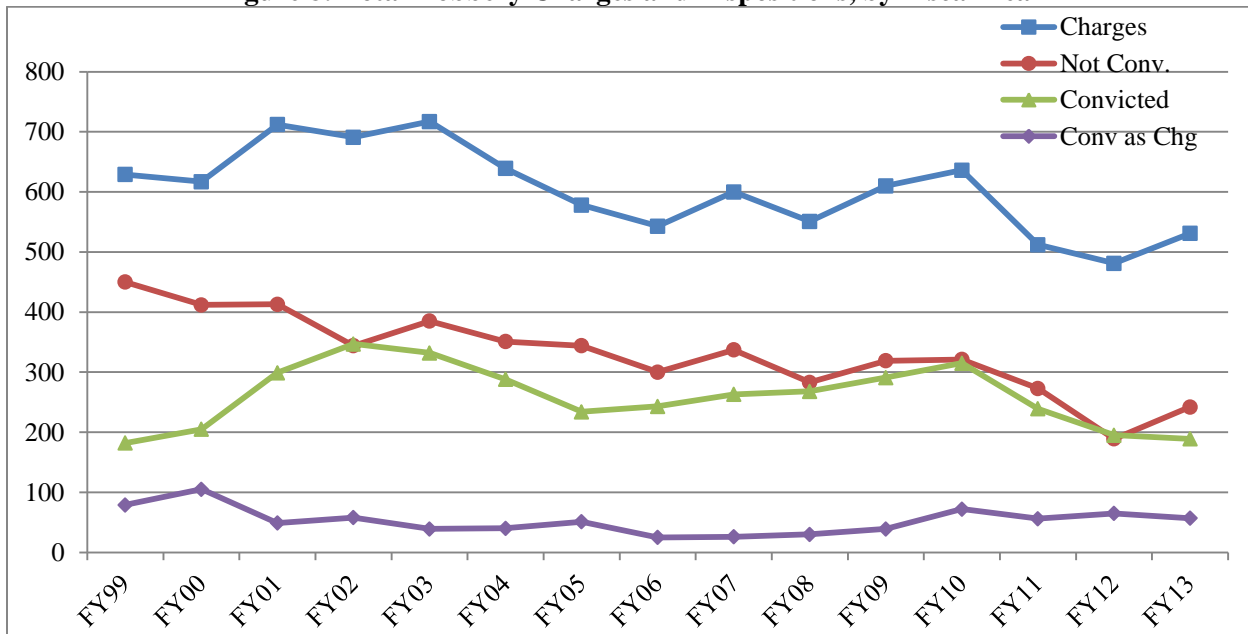
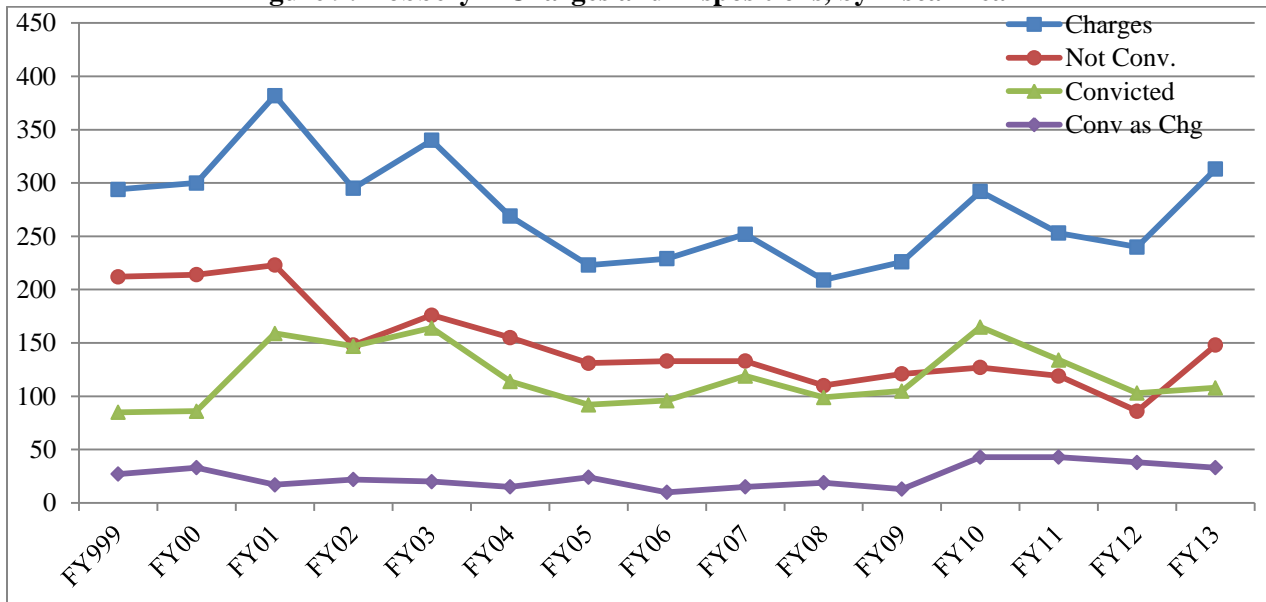


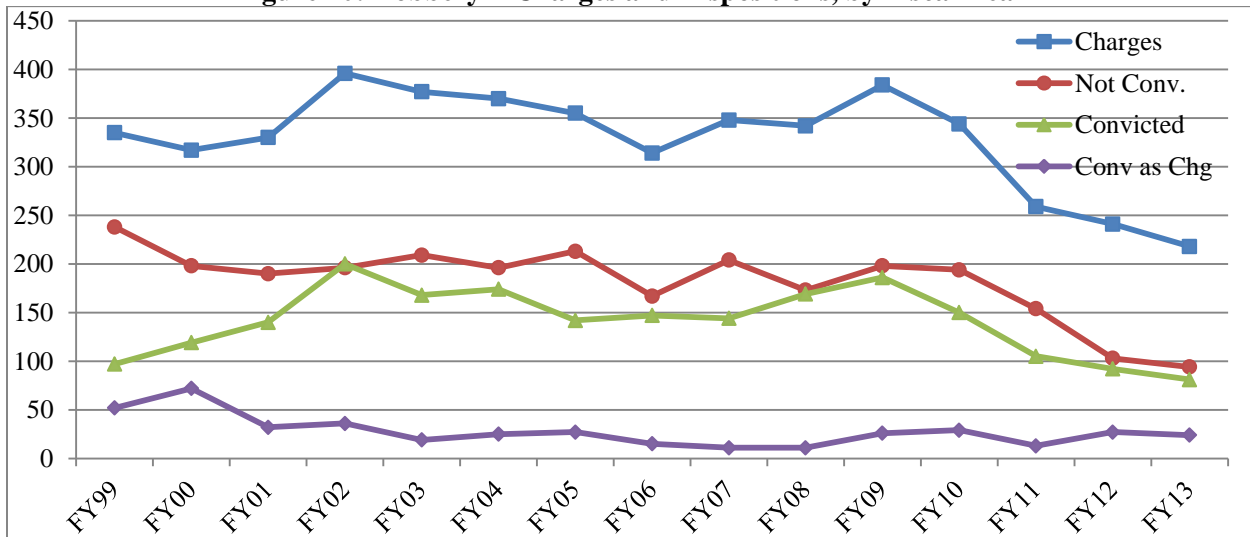
Figure 8 shows that the numbers of robbery charges and non-convictions have been steadily declining. After a rise between FY1999 and FY2002, convictions have also been declining. Since 2001 the number of charges resulting in conviction as originally charged has remained relatively stable. It is evident, however, that a small percentage of robbery charges in Iowa result in conviction as originally charged.

When observing charges and dispositions separately for Robbery-1 (fig.9) and Robbery-2 (fig. 10), a similar trend is found. Relatively few charges of Robbery-1 and Robbery-2 result in conviction as charged, but the raw number of these has remained stable over the period. On the other hand, until 2013 there was a steady drop in the number of defendants not convicted for Robbery-1, with the increase in FY2013 reflecting similar figures last seen in FY2004. Defendants not convicted for Robbery-2 remained relatively stable from FY2000-FY2010 with declines seen thereafter.

**Figure 9: Robbery-1 Charges and Dispositions, by Fiscal Year**



**Figure 10: Robbery-2 Charges and Dispositions, by Fiscal Year**



Shown in Figure 11, the total number of robbery convictions declined from 1999-2006 and has since increased to levels similar to those seen in 1999-2000. Convictions for Robbery-2 exceed those for Robbery-1 and declined from FY1999-2006 with a period of stability from FY2006-2009. After a jump in FY2010-2011, convictions in FY13 were similar in number to those between FY2006-2009. Robbery-1 convictions remained relatively stable from FY1999-FY2009, with an increase in convictions from FY2009-FY2010. For the last four years, the number of Robbery-1 convictions is higher than in the past but has remained relatively stable.



**Figure 11: Robbery-1 and Robbery-2 Convictions, by Fiscal Year**

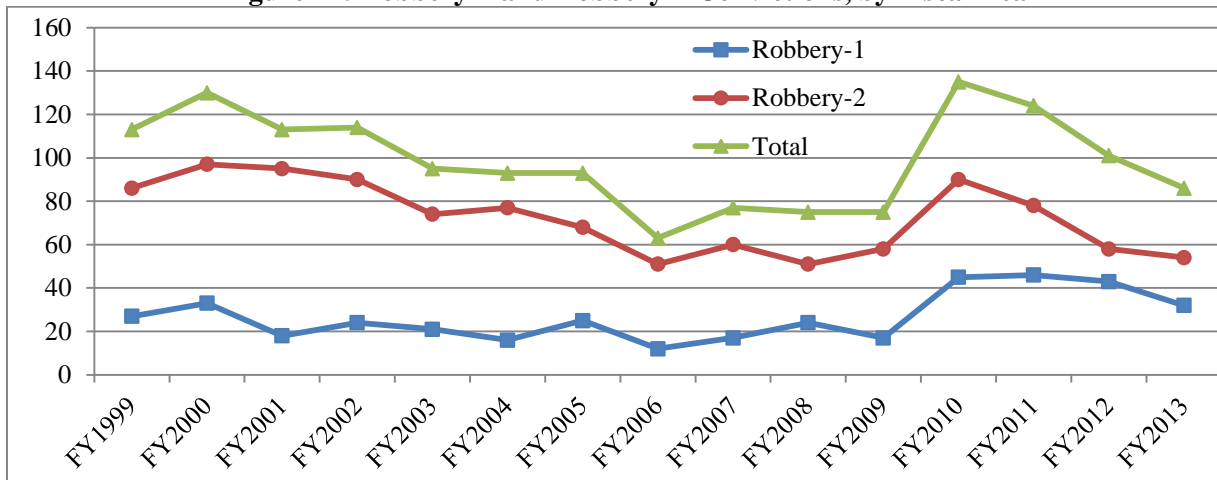
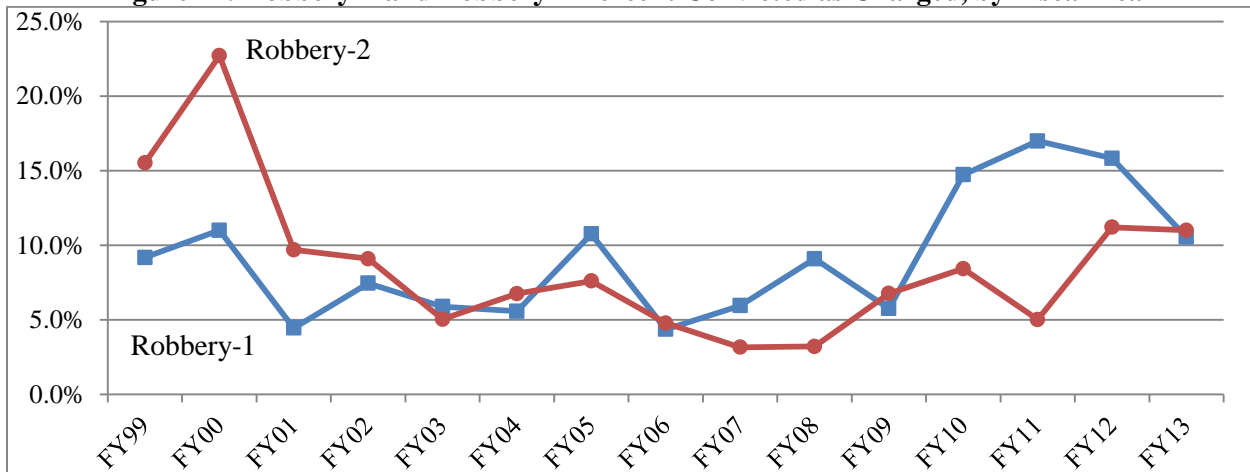


Figure 12 shows the percentage of robbery charges resulting in conviction as originally charged. From FY1999-2002 the percentage of Robbery-2 charges resulting in conviction as charged exceeded those for Robbery-1. The percentages for the two offenses were relatively similar from FY2002 through FY2009, but since that time a higher rate of conviction as charged has been seen for Robbery-1 charges. Note that, despite the year-to-year changes, it is unusual for robbery charges of any seriousness to result in conviction as originally charged, as the highest percentage shown on the graph is less than 25 percent.

**Figure 12: Robbery-1 and Robbery-2 Percent Convicted as Charged, by Fiscal Year**



### ***Robbery Prison Admission Cohort***

This section specifically focuses on prison admissions as the result of robbery charges. An analysis of robbery is essential in the examination of mandatory sentencing primarily because of the high volume of 70% admissions resulting from robbery convictions. As shown immediately below, in FY2013, for example, robbery accounted for 57.6% of all new 70% prison admissions.

**Table 17: FY13 New Prison Admissions Serving 70% Mandatory Sentences**

Code Citation	Description	N	%
707.11	Attempted Murder	4	4.3%
707.3	Murder 2 <sup>nd</sup> Degree	10	10.9%
707.6A(2)	Vehicular Homicide (C Felony)	3	3.3%
709.3	Sex Abuse 2 <sup>nd</sup>	13	14.1%
710.3	Kidnapping 2 <sup>nd</sup> Degree	1	1.1%
711.2	Robbery-1	22	23.9%
711.3	Robbery-2	31	33.7%
901A 2(1),A	Sexual Predator Prior Conviction	1	1.1%
901A 2(1),B	Sexual Predator Prior Conviction	1	1.1%
901A 2(2)	Sexual Predator Two or More Prior Convictions	1	1.1%
901A 2(3)	Sexual Predator Prior Conviction-Felony	2	2.2%
902.8,A	Habitual Criminal (violent)	3	3.3%
	Total	92	96.7%

The admission cohort for analysis below was drawn from the Iowa Corrections Offender Network (ICON), the information system of the Iowa Department of Corrections. The cohort includes all new incoming inmates whose ***original charges*** included either Robbery-1 or Robbery-2. Robbery need not have been a resulting conviction offense within this cohort, as many inmates benefitted from a reduction of the original robbery charge to other offenses. Selecting inmates based upon original charge permitted an analysis of charge reduction as well as examination of sentence length and time served prior to release.

Additionally, the cohort includes all those in ICON whose initial charged offense was either Robbery-1 or Robbery-2, regardless of whether the robbery was the most serious offense charged. For example, if an inmate were charged with an attempted murder (a Class B felony) and a Robbery-2 (a Class C felony), he or she would still be included in the cohort. Many analyses of prison population use only the most serious conviction offense, but this analysis does not do so to permit a more complete examination of robbery charging and sentencing practices. Those charged with Robbery-1 or Robbery-2 were selected for this analysis because they constitute the bulk of those currently entering prison in Iowa whose terms are governed by Iowa Code §902.12 (the “70 percent” law).

Note that this cohort does not include all robbers entering the prison system, as the cohort was limited only to those who entered prison as the result of a new direct court commitment or a probation revocation. Offenders who entered prison on violator status or as the result of an offense committed on parole or work release, for example, are not included. Limiting the cohort in this way is intended to permit a “purer” analysis of any changes stemming from the movement toward mandatory minimum sentences.

The first of these offenders entered prison on 2/13/1970, but the ICON data base reliably goes back only to January, 1986. There were a number of offenders admitted to prison for robbery offenses prior 1986 who were identified in the data base but whose reason for original entry to prison could not be

determined. When researchers were unable to identify whether an offender entered prison either as a new direct court commitment or probation revocation, he or she was excluded from the cohort. The last date of admission for the cohort was 6/29/2012. Offenders were grouped into periods in five year increments based on their prison admission date. This grouping was established prior to the availability of FY13 prison admission data. The resulting cohort included 3,224 separate individuals who accounted for 3,187 admissions (i.e., there were 37 offenders who entered prison multiple times as the result of robbery charges).

### ***Characteristic of Offenders Charged with Robbery***

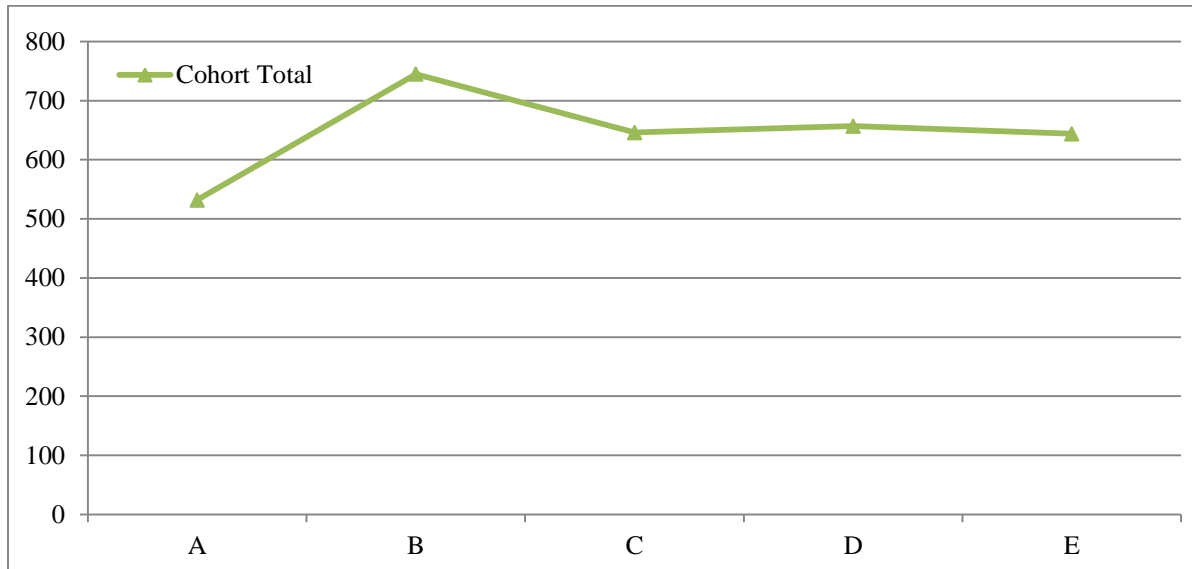
For the purposes of analysis, the cohort was divided into five groups based upon entry date to prison. These divisions were selected to provide similar sample sizes and also coincide with changes in statutes pertaining to robbery.

Group A: pre 01/01/90
Group B: 01/01/90 – 12/31/96
Group C: 01/01/97 – 06/30/02
Group D: 07/01/02 – 06/30/07
Group E: 07/01/07 – 06/30/12

**Table 18: Robbery-1 or Robbery-2 New Prison Admissions, by Judicial District and Period (FY1970-2012)**

	Pre-70%		Post 70%			Total
	A	B	C	D	E	
District 1	66	94	102	96	106	462
District 2	33	48	48	40	58	227
District 3	33	85	39	35	38	230
District 4	43	52	31	46	41	213
District 5	181	183	209	252	226	1,051
District 6	61	74	47	80	81	343
District 7	76	164	118	74	50	482
District 8	39	45	52	34	44	214
Total	532	745	646	657	644	3,224

**Figure 13: Robbery-1 or Robbery-2 New Prison Admissions (Total), by Period (FY1970-FY2012)**



The number of new offenders entering prison as the result of charges of Robbery-1 or Robbery-2 has increased since Period A, but has remained relatively stable for the past 15 years. The highest incidence of Robbery-1 or 2 was seen in Period B immediately following enactment of the mandatory minimum sentence.

### Sex

The robbery cohort was overwhelmingly male (92.2% vs. 7.8%). Women were more significantly more likely to have been arrested for Robbery-2 (8.7% vs. 6.8%) and men were significantly more likely to have been arrested for Robbery-1 (93.2% vs. 91.3%).

**Table 19: New Robbery Prison Admission Arresting Offense, by Sex**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
Male*	1,486	93.2%	1,488	91.3%	2,974	92.2%
Female*	108	6.8%	142	8.7%	250	7.8%
Total	1,594	100%	1,630	100%	3,224	100%

\*Significant at a 95% confidence interval.

**Table 20: Number of New Robbery Prison Admissions per Period, by Sex**

	Pre-70%		Post-70%			Total	
	A	B	C	D	E	N	%
Male	505	693	600	575	601	2,974	92.2%
Female	27	52	46	82	43	250	7.8%
Total	532	745	646	657	644	3,224	100%
% Female	05.1%	07.0%	07.1%	12.5%	06.7%	--	07.8%

Men were significantly more likely than women to be admitted to prison on robbery charges throughout the period examined. During period D the percentage of female robbers almost doubled, although it is unclear why this period held a disproportionate percentage of women.

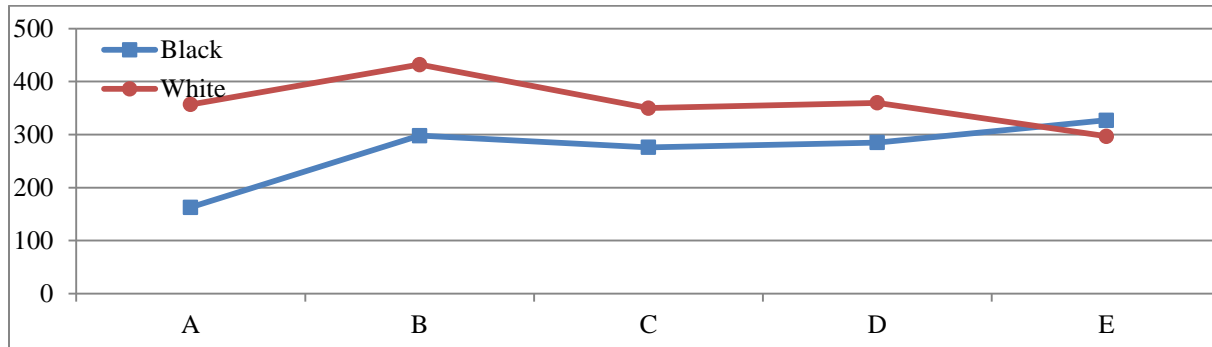
## Race

Examining changes in the racial make-up of the cohort over time, one sees an increasing African-American percentage in the robbery cohort, with a doubling of the African-American number from Period A through Period E (163 vs. 328). In the most recent period, African-American admissions stemming from robbery charges surpassed the number of Caucasian admissions.

**Table 21: Number of New Robbery Prison Admissions per Period, by Race**

	Pre-70%		Post 70%			Total	
	A	B	C	D	E	N	%
Caucasian	357	432	350	360	298	1,797	55.7%
African-American	163	298	276	285	328	1,350	41.9%
Other	12	15	20	12	17	76	02.4%
Unknown	0	0	0	0	1	1	00.0%
Total	532	745	646	657	644	3,224	100%
% African-American	30.6%	40.0%	42.7%	43.4%	50.9%	--	41.9%

**Figure 14: Number of New Prison Admissions Stemming from Robbery Charges, per Period, by Race**



Caucasians and African-Americans appear to be arrested for Robbery-1 and Robbery-2 in similar numbers, although Caucasians are slightly more likely to be convicted of Robbery-2 (57.7% vs. 55.1%) while African-Americans are more likely to be convicted of Robbery-1 (42.1% vs. 39.7%). These findings failed to reach statistical significance.

**Table 22: New Robbery Prison Admissions due to Robbery Charges, by Race**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
Caucasian	888	55.7%	909	55.8%	1,797	55.7%
African-American	668	41.9%	682	41.8%	1,350	41.9%
Other	38	2.4%	38	02.3%	76	2.4%
Unknown	0	0.0%	1	0.1%	1	0.0%
Total	1,594	100%	1,630	100%	3,224	100%

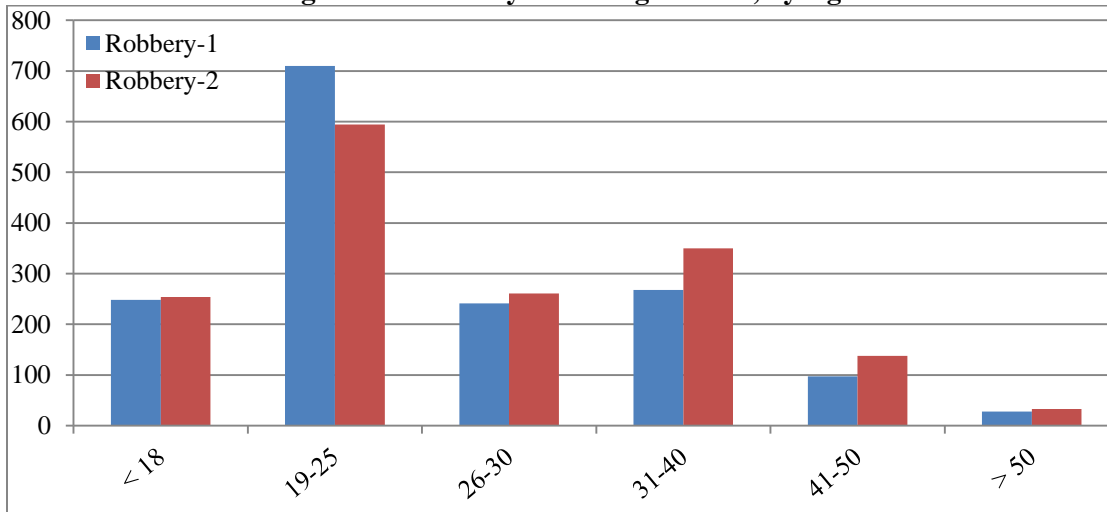
**Table 23: New Robbery Prison Admissions due to Robbery Conviction, by Race**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
Caucasian	430	55.1%	815	57.7%	1,245	56.8%
African-American	329	42.1%	560	39.7%	889	40.5%
Other	22	02.8%	36	2.5%	58	2.6%
Unknown	0	0.0%	1	0.1%	1	0.0%
Total	781	100%	1,412	100%	2,193	100%

### Age

About forty-one percent of offenders in this cohort were between the ages of nineteen and twenty-five, with 15.6% eighteen and younger or twenty-six to thirty years old. Approximately 91 percent of offenders were age forty or below, suggesting that robbery is a crime of young offenders. Those between the ages of 19-25 were significantly more likely to be arrested for Robbery-1 rather than Robbery-2 (44.6% vs. 36.4%). Offenders between the ages of 31-40 (21.5% vs. 16.8%) and 41-50 (8.5% vs. 6.1%) were significantly more likely to be arrested for Robbery-2 compared to Robbery-1.

**Figure 15: Robbery Arresting Offense, by Age**

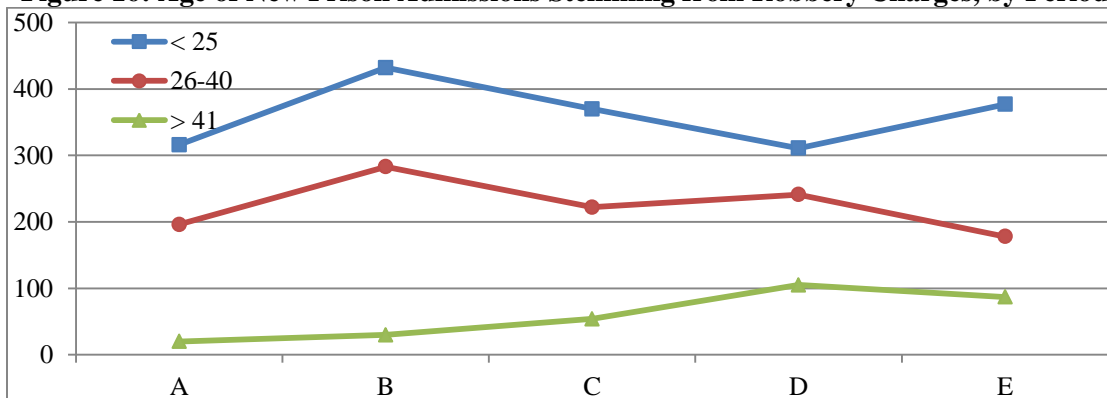


**Table 24: New Prison Admissions due to Robbery Charges, by Age**

	Robbery -1		Robbery-2		Total	
	N	%	N	%	N	%
< 18	249	15.6%	254	15.6%	503	15.6%
19-25*	710	44.6%	594	36.4%	1,304	40.5%
26-30	241	15.1%	261	16.0%	502	15.6%
31-40*	269	16.9%	350	21.5%	619	19.2%
41-50*	97	06.1%	138	8.5%	235	07.3%
> 51	28	01.8%	33	2.0%	61	01.9%
Total	1,594	100%	1,630	100%	3,224	100%

\*Significant at a 95% confidence interval.

**Figure 16: Age of New Prison Admissions Stemming from Robbery Charges, by Period**

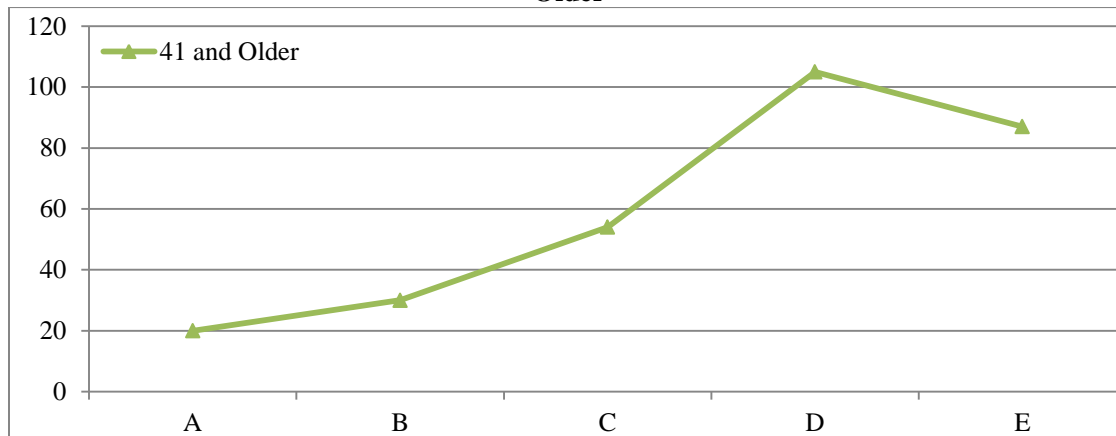


**Table 25: New Robbery Prison Admissions, by Period, by Age**

	Pre-70%		Post 70%			Total	
	A	B	C	D	E	N	%
< 18	63	133	134	70	103	503	15.6%
19-25	253	299	236	241	275	1,304	40.4%
26-30	100	144	75	92	91	502	15.6%
31-40	96	139	147	149	88	619	19.2%
41-50	13	25	48	89	60	235	7.3%
>50	7	5	6	16	27	61	1.9%
Total	532	745	646	657	644	3,224	100%
Median Age	24	24	23	26	23	--	--

Figure 17 displays trends in the age of robbery offenders represented in Table 25, displaying collapsed age categories for easy comparison. Until the most recent time period, offenders aged 18-25 and 26-40 showed a similar pattern, tending to rise and fall together. Also evident is that, while older offenders comprise a small percentage of the robbery prison admissions, their numbers have been increasing.

**Figure 17: New Prison Admissions Stemming from Robbery Charges, by Period, Offenders 41 and Older**



## Education

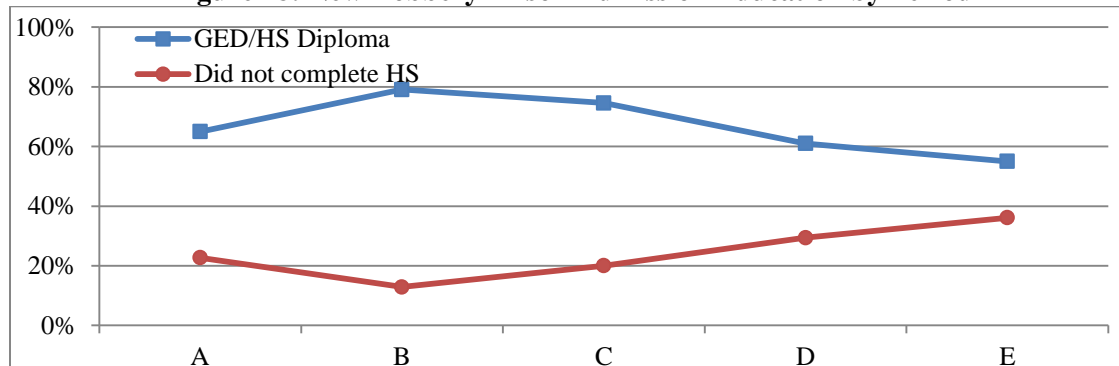
The greatest percentage of those entering prison after a robbery charge had obtained their GED/High School Diplomas (67.4%), while 23.9% had not. About four percent of offenders had some type of college education. There was little variation in the education of offenders by arresting offense, but offenders arrested for Robbery-2 were significantly less likely to have participated in college without earning a degree. A comparison of education among those receiving a 70% sentence and those not so sentenced revealed few differences, although the non-70% group was statistically more likely to have received technical or trade training.

**Table 26: New Robbery Prison Admission Education, by Arresting Offense and Fiscal Year**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
College Degree	49	03.1%	46	02.8%	95	02.9%
Technical or Trade Training	39	02.4%	39	02.4%	78	02.4%
Some College (No Degree)*	32	02.0%	18	01.1%	50	01.6%
GED	737	46.2%	769	47.2%	1,506	46.7%
HS Diploma	330	20.7%	336	20.6%	666	20.6%
Did not complete HS	374	23.4%	398	24.4%	772	23.9%
Unknown	33	02.1%	24	01.5%	57	01.8%
Total	1,594	100%	1,630	100%	3,224	100%

\*Significant at a 95% confidence interval.

**Figure 18: New Robbery Prison Admission Education by Period**



**Table 27: New Robbery Prison Admissions Education per Period, by Education**

	Pre-70%		Post 70%			Total	
	A	B	C	D	E	N	%
College Degree	27	26	21	18	03	95	02.9%
Technical or Trade Training	26	19	8	14	11	78	02.4%
Some College (No Degree)	09	08	03	18	12	50	01.6%
GED	208	411	376	282	229	1,506	46.7%
HS Diploma	138	178	106	119	125	666	20.6%
Did not complete HS	121	96	129	193	233	772	23.9%
Unknown	03	07	03	13	31	57	01.8%
Total	532	745	646	657	644	3,224	100%

Within the last 15 years, there have been declines in the number of robbers entering prison possessing either a GED or a High School Diploma. This suggests that, within the last 15 years, robbers have become more likely to have been unsuccessful in school.



### Birthplace

The greatest percentage of robbery offenders were born in Iowa (50.2%), but a considerable number were born out-of-state (44.0%). There were no statistical differences in arresting offense by birthplace.

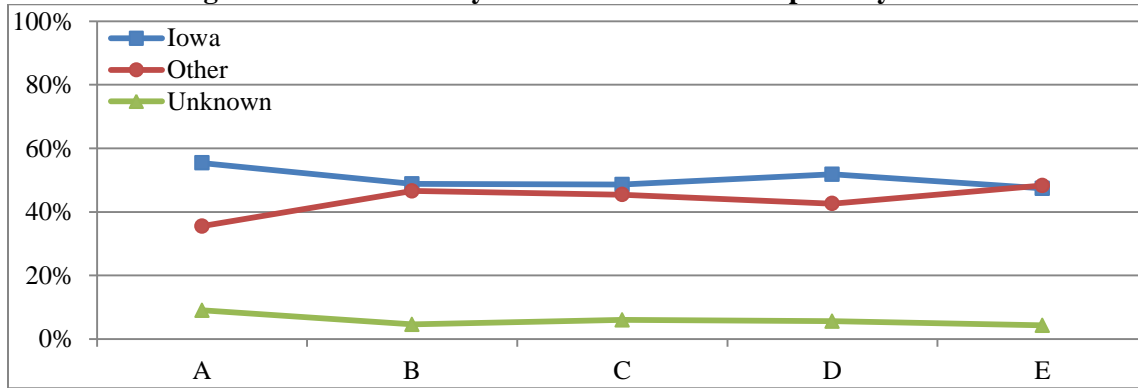
**Table 28: New Robbery Prison Admission Arresting Offense, by Birthplace**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
Iowa	787	49.4%	831	51.0%	1,618	50.2%
Other	704	44.2%	716	43.9%	1,420	44.0%
Unknown	103	06.5%	83	05.1%	186	05.8%
Total	1,594	100%	1,630	100%	3,224	100%

*\*Significant at a 95% confidence interval*

In period A there were considerably more Iowans admitted to prison for robbery than individuals from other states. However, the percentage of offenders born in Iowan and other states entering prison on robbery charges has since remained relatively stable and similar for the past twenty years.

**Figure 19: New Robbery Prison Admission Birthplace by Period**



**Table 29: New Robbery Prison Admission Birthplace by Period**

	Pre-70%		Post 70%			Total	
	A	B	C	D	E	N	%
Iowa	295	364	314	340	305	1,618	50.2%
Other	189	347	293	280	311	1,420	44.0%
Unknown	48	34	39	37	28	186	05.8%
Total	532	745	646	657	644	3,224	100%

### ***FY2011-FY2012 Cohort, by Weapon***

Using data included in institutional reception summaries and pre-sentence investigations, information was compiled the weapons involved in the offenses of FY2011 and FY2012 robbery prison admissions. Robbery weapon information included the weapon that the offender was believed to have possessed. For instance, in some robberies a weapon was threatened but was not seen (e.g., a handgun in a pocket). In these instances, it is difficult to know if the offender actually carried a gun or another object, or was using his hand to suggest the presence of a weapon. In these instances the weapon was classified as the object the victim believed the offender to possess.

It is also important to note the variations in robberies involving hands or feet as weapons. Some robberies involved instances in which an offender became physical in an attempt to rob, while others involved indirect physical contact. For instance, theft cases in which an offender pushes past an officer or resists arrest may be classified as a robbery involving hands or feet. The Weapon-Other category refers to robbery situations in which an offender used an object other than a gun, knife, or hands or feet. These would include such weapons as pipes, bricks, crowbars, etc. If an offender used more than one weapon during the robbery the most lethal weapon was chosen for this analysis.

Firearms were the weapon with the highest percentage of use (39.2%), followed by hands or feet (21.6%). Robberies involving a firearm, knife, or other external weapon accounted for 59.6% of robberies within the FY2011 and FY2012 cohort. Approximately fifteen percent of robberies did not involve a weapon.

**Table 30: FY11-FY12 Robbery Prison Admissions, by Robbery Weapon**

	N	%
Firearm	96	39.2%
Knife	33	13.5%
Weapon-Other	17	06.9%
Hands/Feet	53	21.6%
No Weapon	37	15.1%
Unknown	09	03.7%
Total	245	100%

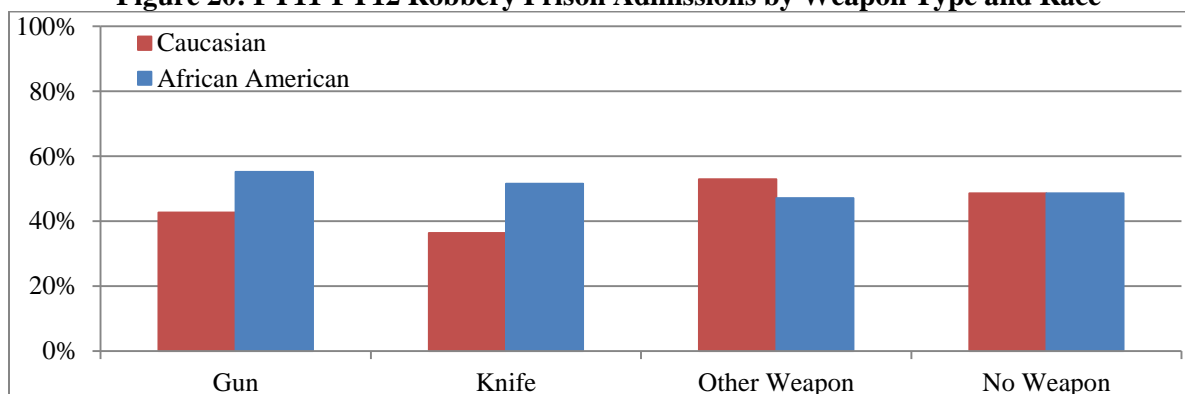
A common assumption concerning sentencing is that the more serious weapon used, the more severe sanction imposed, with firearms-related crimes receiving the most serious penalties. While there are greater percentages of Robbery-1 convictions using firearms (55.3%), there are also a large percentage of Robbery-2 convictions (40.8%) also involving a gun; a finding which failed to reach significance. Statistical significance was found for robberies involving a hands or feet assault, with Robbery-1 having significantly lower percentages than Robbery-2 (6.4% vs. 18.4%). This analysis suggests that use or threat of a firearm can result in either a Robbery-1 or Robbery-2 conviction. Please note that the table below only includes robbery arrests that resulted in convictions.

**Table 31: FY11-FY12 Robbery Prison Admission, by Conviction Type and Weapon<sup>33</sup>**

	Robbery-1 Conviction		Robbery-2 Conviction		Total	
	N	%	N	%	N	%
Firearm	26	55.3%	31	40.8%	57	46.3%
Knife	9	19.1%	15	19.7%	24	19.5%
Weapon-Other	6	12.8%	06	7.9%	12	9.8%
Hands/Feet*	3	6.4%	14	18.4%	17	13.8%
No Weapon	2	4.2%	08	10.5%	10	8.1%
Unknown	1	2.1%	2	2.6%	3	2.4%
Total	47	100%	76	100%	123	100%

\*Significant at a 95% confidence interval.

The following tables and charts include information on robbery weapon type for all offenders arrested on robbery charges who were admitted to prison in FY2011 and FY2012. The size of the FY2011 and FY2012 new prison admission cohort was small, inhibiting an examination of significance by race. It appears, however, that African-Americans are much more likely to use firearms and knives than Caucasians (55.2% vs. 42.7% for firearms and 51.5% vs. 36.4% for knives). Caucasians were more likely to use weapons other than guns or knives (52.9% vs. 47.1%). African-Americans and Caucasians were equally likely to have robbed without threat of a weapon.

**Figure 20: FY11-FY12 Robbery Prison Admissions by Weapon Type and Race****Table 32: FY11-FY12 Robbery Prison Admissions by Weapon Type and Race**

	Firearm		Knife		O-Weapon		Hands/Feet		No Weapon		Unknown		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Caucasian	41	42.7%	12	36.4%	9	52.9%	25	47.2%	18	48.6%	1	11.1%	106	43.3%
African-Amer.	53	55.2%	17	51.5%	8	47.1%	27	50.9%	18	48.6%	8	88.9%	131	53.5%
Other	1	1.0%	04	12.1%	0	0.0%	1	1.9%	1	2.7%	0	0.0%	07	2.8%
Unknown	1	1.0%	00	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	01	0.4%
Total	96	100%	33	100%	17	100%	53	100%	37	100%	9	100%	245	100%

As shown below, an examination of all those admitted to prison following a robbery arrest suggests that charge reduction is somewhat more likely when less deadly weapons are used. Those actually convicted

<sup>33</sup> This particular table only includes robbery prison admissions who were *convicted* of either Robbery-1 or Robbery-2.

of robbery and receiving a 70% sentence were more likely to have used or threatened use of a firearm (46.3% vs. 32.0%). While it is evident that robbery offenders who use or threaten the use of firearms are more likely to be admitted to prison on a 70% mandatory minimum, it is also true that about 32 percent of these escaped the mandatory minimum.

**Table 33: FY11-FY12 Robbery Arrest Prison Admissions, by Sentence Type and Weapon**

	70% Sentence		Non 70% Sentence		Total	
	N	%	N	%	N	%
Firearm*	57	46.3%	39	32.0%	96	39.2%
Knife*	24	19.5%	9	7.4%	33	13.5%
Weapon-Other	12	9.7%	5	4.1%	17	6.9%
Hands/Feet*	17	13.8%	36	29.5%	53	21.6%
No Weapon	10	18.1%	27	22.1%	37	15.1%
Unknown	3	2.4%	6	4.9%	9	3.7%
Total	123	100%	122	100%	245	100%

*\*Significant at a 95% confidence interval.*

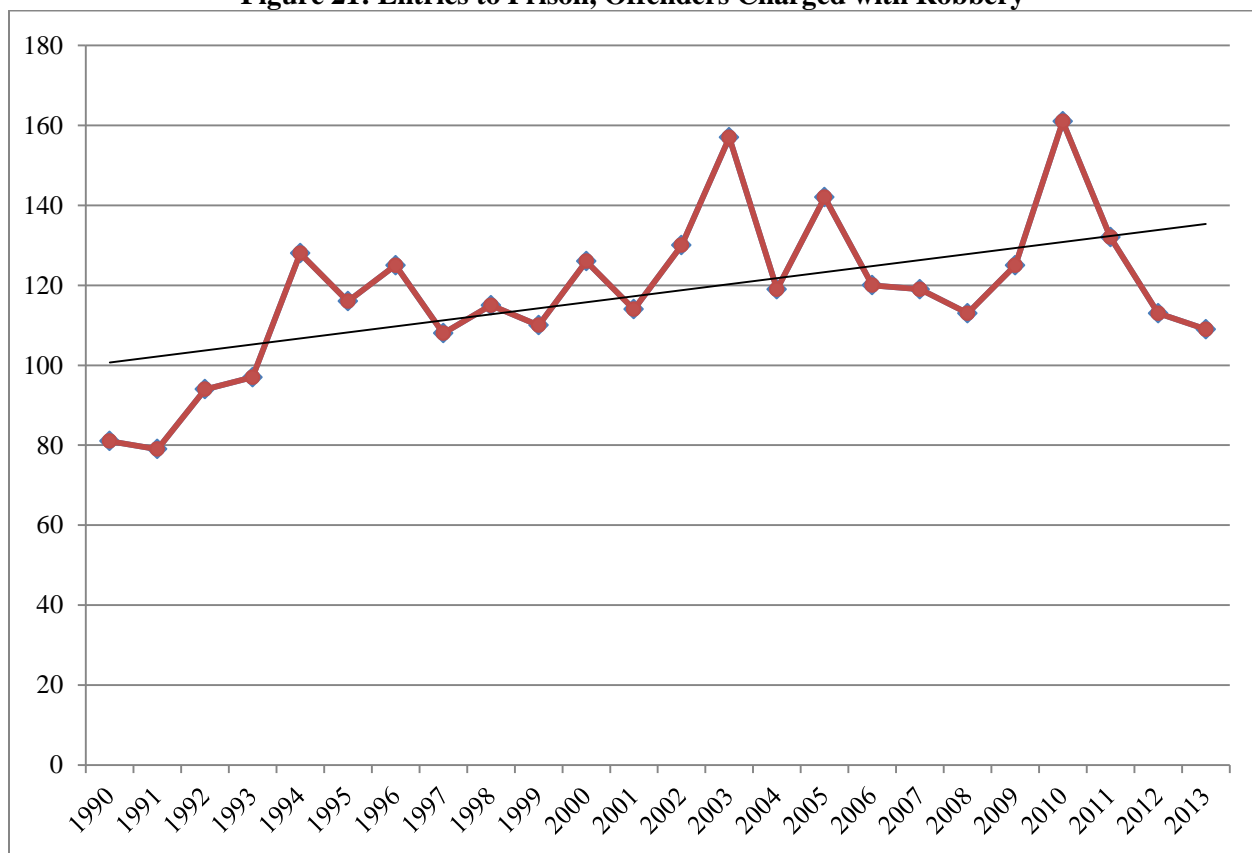
Offenders using knives during robberies were also significantly more likely to receive a 70% sentence, while those using hands and feet were more likely to receive a non-70% sentence.

### ***Robbery Prison Population***

This section focuses on the impact of Robbery-1 and Robbery-2 mandatory sentences on Iowa's prison population. The prison population is determined by two factors: how many people are admitted to prison and how long they stay. This portion of the report will address the first factor by examining the number of new Robbery-1 or Robbery-2 prison admissions by fiscal year and then the total number of prisoners incarcerated for robbery 70% sentences at the end of each fiscal year. The report goes on to identify how long prisoners stay by examining the number of robbery offenders released from prison during a fiscal year and calculating their average length-of-stay.

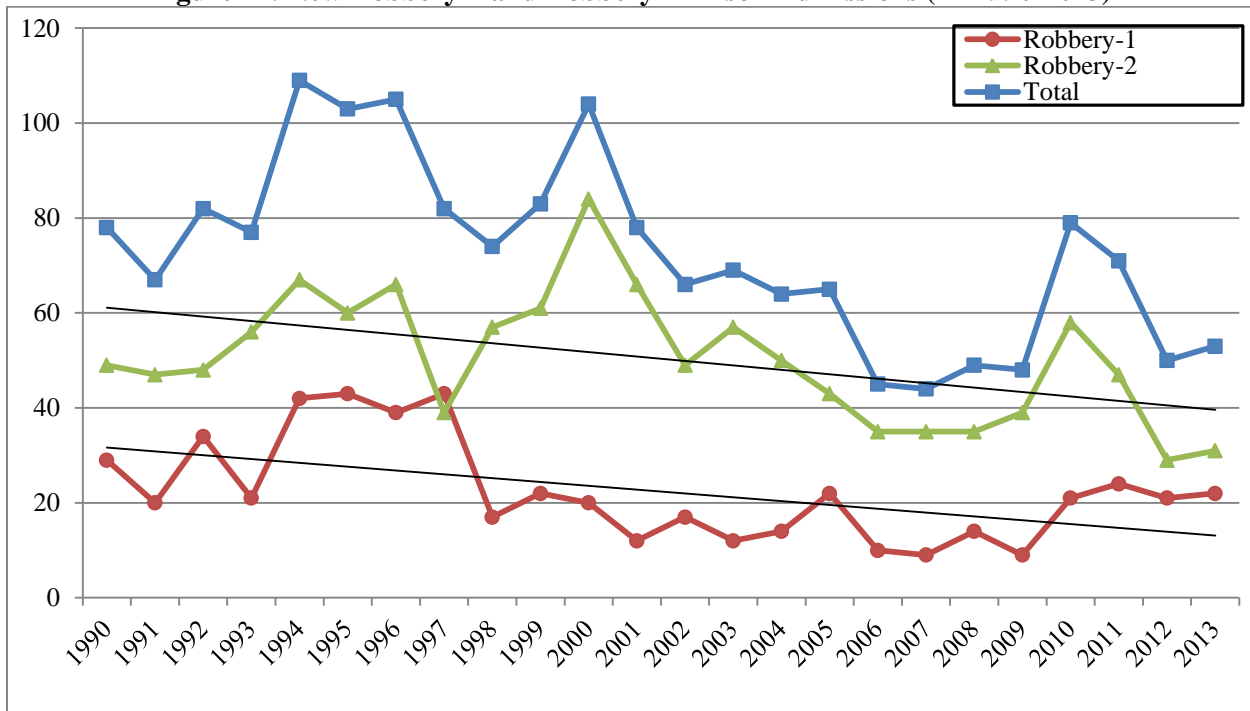
**Robbery Prison Admissions:** The total number of offenders originally charged with robbery and newly admitted to prison between FY1990-FY2013 totaled 2,833. As shown below, the trend line for these admissions is slightly upward, with the trend line at the end of the period about 35 percent higher than at the beginning.

**Figure 21: Entries to Prison, Offenders Charged with Robbery**



While the number of charged robbers entering prison has risen since 1990, the next chart shows that the number actually sentenced to prison after a robbery *conviction* has declined. Following the implementation of mandatory sentences in 1996, there was a steep decline in Robbery-1 prison admissions, probably relating to the severity of the new (then-85%) penalty. Shortly after the drop in admissions for Robbery-1 there was a rise in Robbery-2 admissions, followed by a lengthy period of decline. The trend lines for both Robbery-1 and Robbery-2 admissions are declining despite a jump in admissions during FY10 and FY11.

**Figure 22: New Robbery-1 and Robbery-2 Prison Admissions (FY1990-2013)**



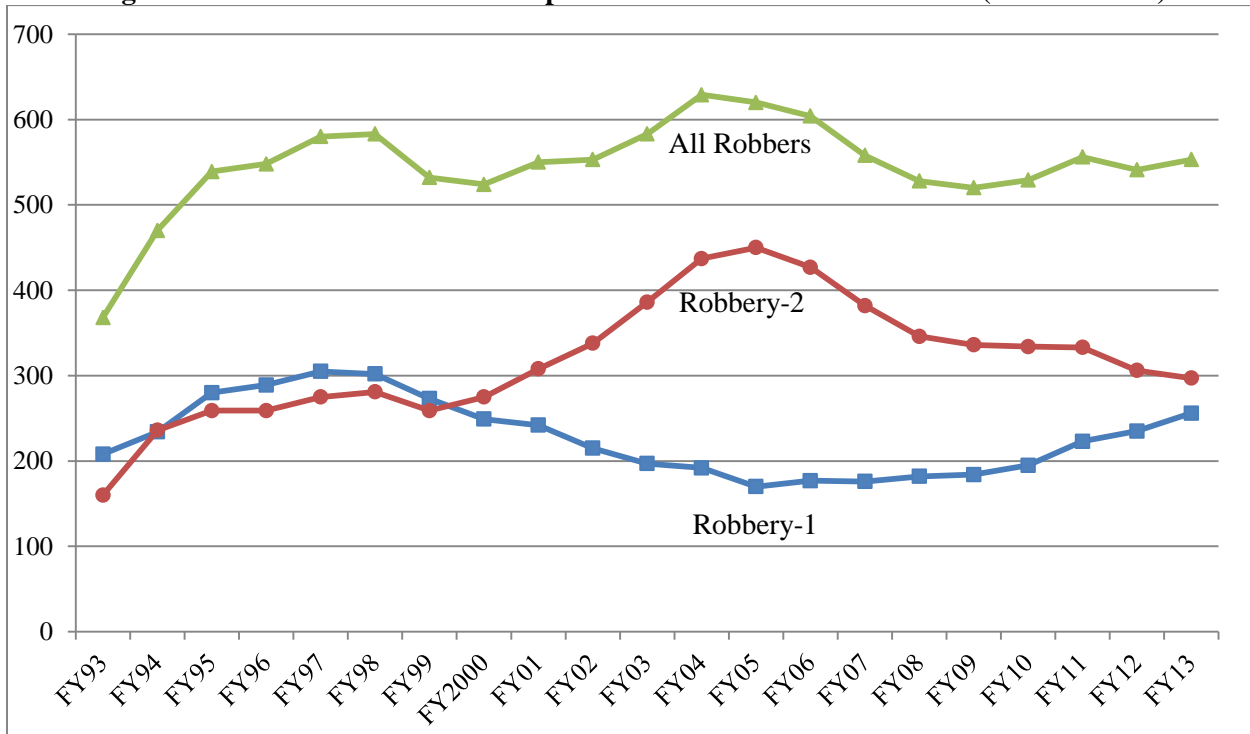
As shown below, since FY2005 there has been a drop in Robbery-2 inmates in the end-of-year prison population, as those who entered prison in the 1990's departed and were not all replaced by incoming inmates. After a period of decline between FY1997 and FY2005, the number of first degree robbers has begun creep up, a trend which is expected to continue until at least 2014, when the first of the 70% Class B inmates become eligible for release. The extent to which the Class B robbers influence the size of the prison population will depend on the extent to which they receive provisional release following parole/work release eligibility and the number of incoming robbers to replace them.

Looking at the total number of robbers in the population, it is curious that their number has remained largely stable since 1997. With the anticipated increase in first-degree robbers in the population through 2016, however, it is expected that the number of robbers in the population will approach the levels of 2004-05 between 2014 and 2016. During this time period it is expected that the number of second-degree robbers will remain stable, but a rise in Robbery-1 inmates will increase the total robbery number until such time that Robbery-1 releases rise to offset incoming inmates.

**Table 34: End-of-Year Population of Robbers in Prison**

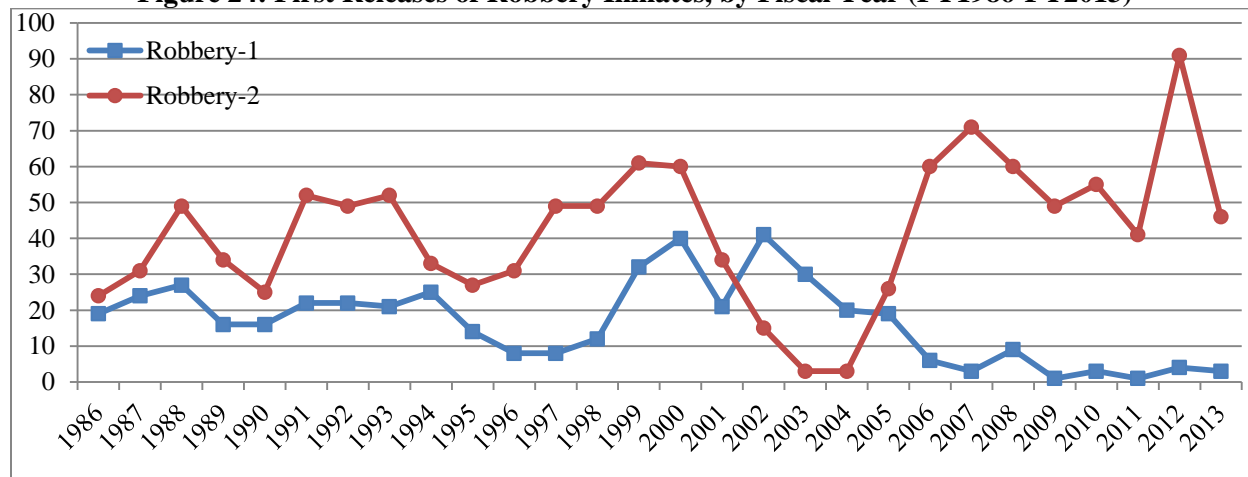
	Robbery-1	Robbery-2	Total
FY1993	208	160	368
FY1994	234	236	470
FY1995	280	259	539
FY1996	288	263	551
FY1997	296	262	558
FY1998	303	278	581
FY1999	273	260	533
FY2000	249	275	524
FY2001	242	308	550
FY2002	215	338	553
FY2003	197	386	583
FY2004	192	437	629
FY2005	170	434	604
FY2006	177	412	589
FY2007	176	368	544
FY2008	182	336	518
FY2009	184	324	508
FY2010	195	328	523
FY2011	223	335	558
FY2012	235	308	543
FY2013	256	297	553
Total	4,519	6,307	10,826

**Figure 23: Robbers in the Prison Population at the End-of-Fiscal Year (FY1993-2013)**



Robbery Prison Releases: Another critical component in examining fluctuations in the prison population is identifying how many offenders leave prison in a given year. A total of 1,647 robbery offenders were released from prison between FY1986-FY2013, but at varying rates depending on their status vis-à-vis the mandatory minimum sentence.

**Figure 24: First Releases of Robbery Inmates, by Fiscal Year (FY1986-FY2013)**



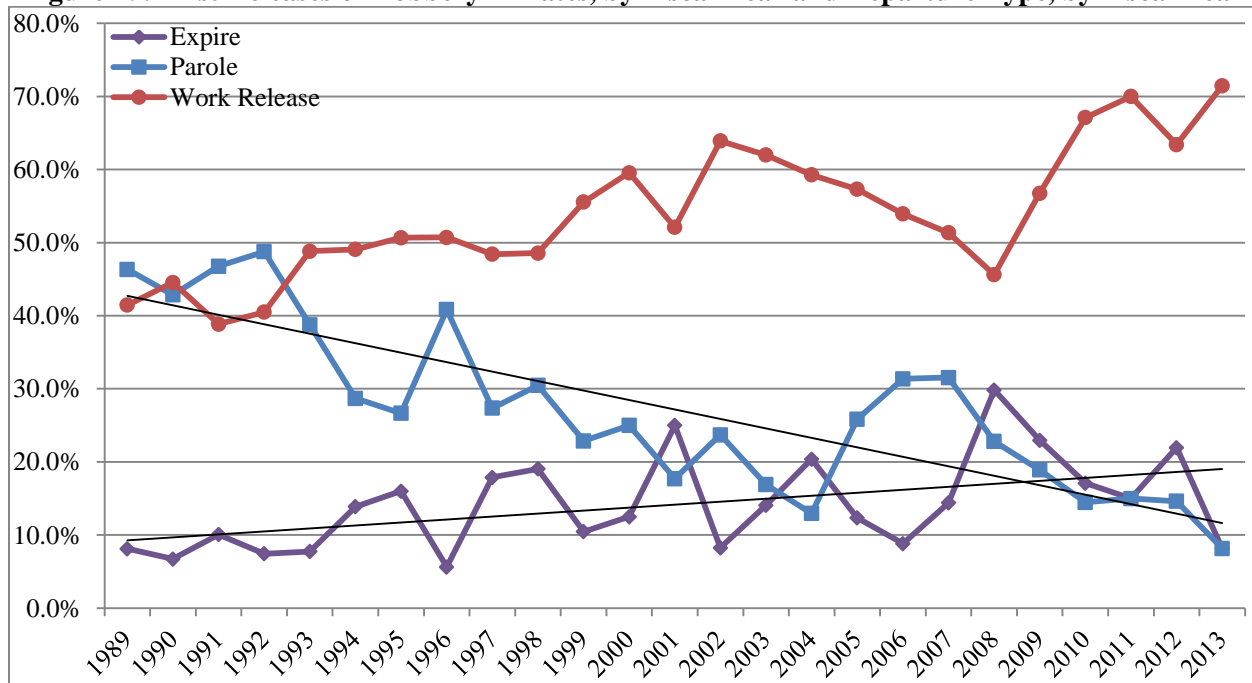
Since FY2005, first-releases for Robbery-2 inmates began to increase dramatically while releases for Robbery-1 continued to decline from FY2002 due to the absence of Robbery-1 offenders eligible for release consideration. The dip in Robbery-2 releases in FY2003-04 was due to the lack of Robbery-2 offenders eligible for release; nearly all the non-70% Robbery-2 offenders had been released, and the remaining offenders were covered by the 70% mandatory minimum and were not yet eligible for release consideration.

The disparity in releases between Robbery-1 and Robbery-2 offenders was greatest in FY2012 due to a spike in Robbery-2 releases. This discrepancy is not surprising because the inmate population at the end of FY2012 included 28 Robbery-2 offenders who were eligible for release, but only nine Robbery-1 offenders in the same status (none of whom had a 70% sentence). There was a period of inconsistency between 2002-2005 where Robbery-2 release rates fell drastically and were actually lower than Robbery-1 rates. This period of instability was due to fact that the Robbery-2 offenders initially affected by the 1996 mandatory minimum statute would not have been eligible for release until they had served 70% of their sentence (7.0 years), making them eligible only after 2004. During this particular time period, there simply were not any Robbery-2 offenders available for release.

Releases by Departure type: When examining prison exits by departure type, we observe a substantial increase in the percentage of offenders leaving prison through work-release from FY1990-FY2013. Prison exits by way of parole have been steadily decreasing while sentence expirations have increased over time. The percentage of offenders exiting prison through sentence expiration or parole has become much more similar within the last fifteen years. From FY1989-FY1996 the percentage of prison exits by way of parole was substantially higher than that of sentence expirations.

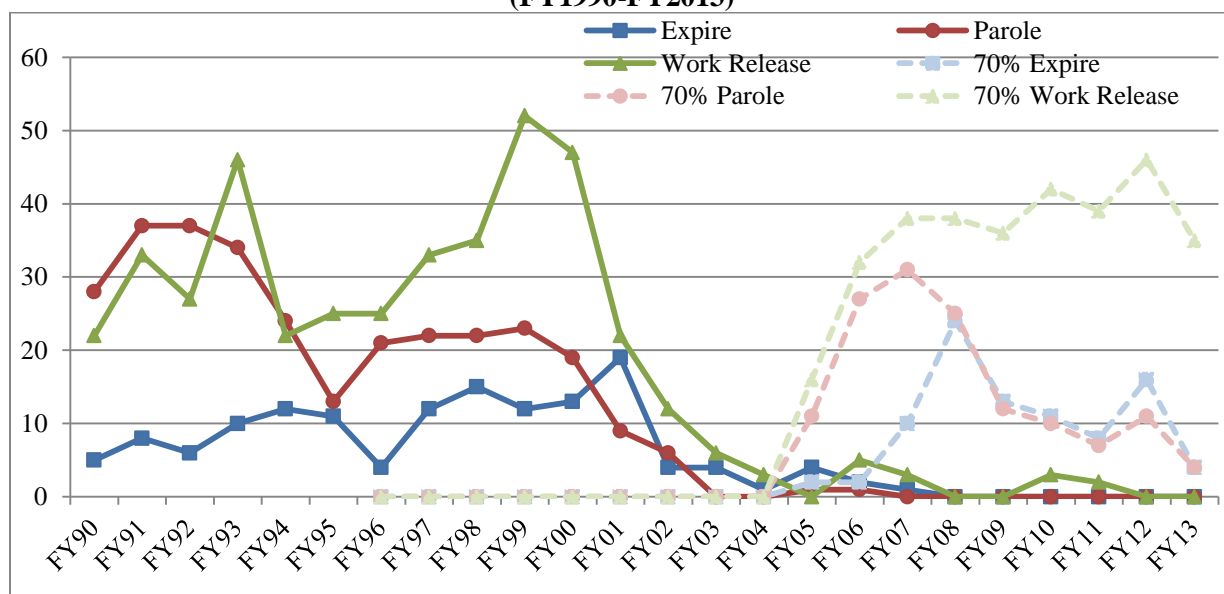


**Figure 25: First Releases of Robbery Inmates, by Fiscal Year and Departure Type, by Fiscal Year**



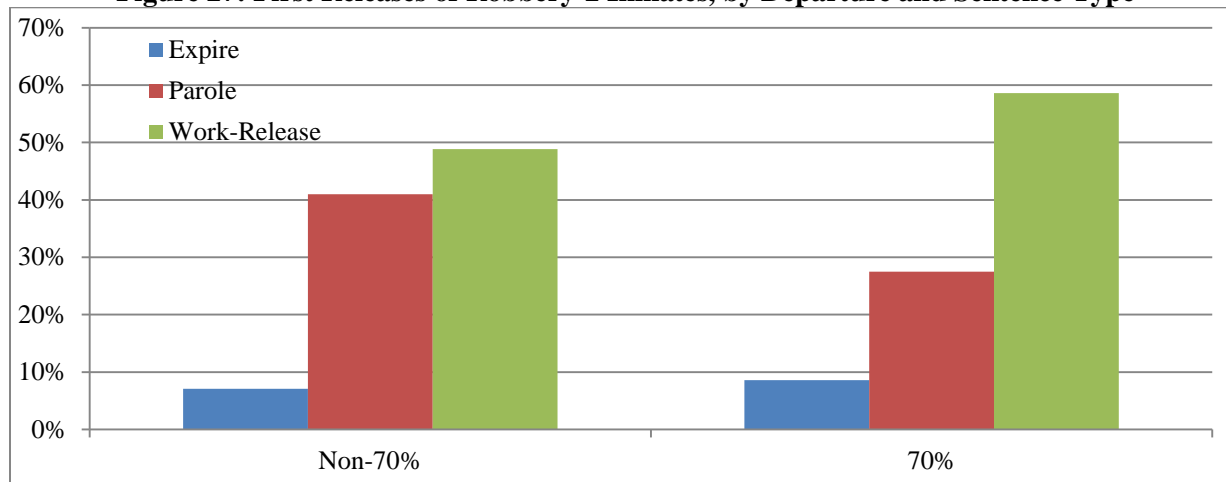
The next chart, which includes only those convicted of Robbery-2, shows that these inmates have historically been released from prison by work release and parole at higher rates than sentence expiration. Once the 70% statute was implemented, the number of robbery-2 releases declined substantially through FY2004, when the first 70% robbery-2 offenders became eligible for release consideration. From FY2004 through about FY2007 robbery-2 releases increased drastically for all departure types, but what is particularly interesting is that over the last six years the number of offenders released via parole or sentence expiration has remained relatively similar while work-release releases continued to climb. Note that the chart distinguishes between inmates released on pre-70% and post-70% sentences.

**Figure 26: First Releases of Robbery-2 Inmates, by Fiscal Year, Departure and Sentence Type (FY1990-FY2013)**



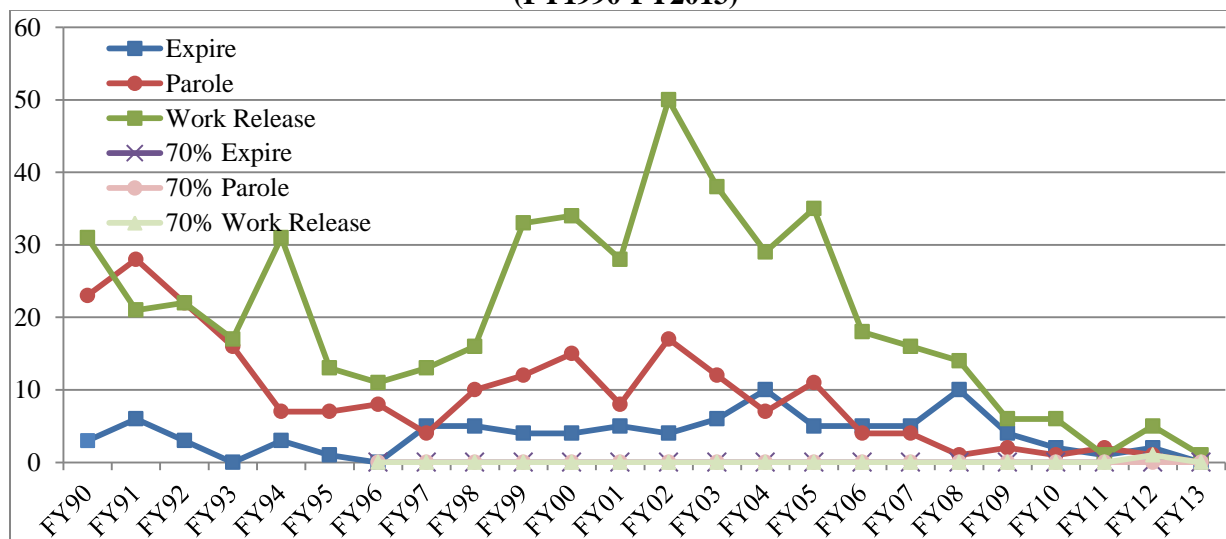
As shown below, offenders serving mandatory sentences have been released from prison via work release at higher rates than those who pre-dated the mandatory terms. They have also been somewhat more likely to expire their sentences. The non-70% group, however, was more likely to exit prison via parole.

**Figure 27: First Releases of Robbery-2 Inmates, by Departure and Sentence Type**



No Robbery-1 inmates who received mandatory 70% sentences have yet become eligible for release. One inmate in FY2012 was released on work release (due to a very unusual waiver of the mandatory minimum), but others will not become eligible until the last quarter of FY2014. The number Robbery-1 releases has recently been very low because nearly all the pre-70% inmates have been released and those serving the 17.5-year mandatory minimum are not yet eligible for release consideration. As has been the case for Robbery-2, the preferred vehicle for release of Robbery-1 inmates has been work release.

**Figure 28: First Releases of Robbery-1 Inmates, by Fiscal Year of Departure and Sentence Type (FY1990-FY2013)**



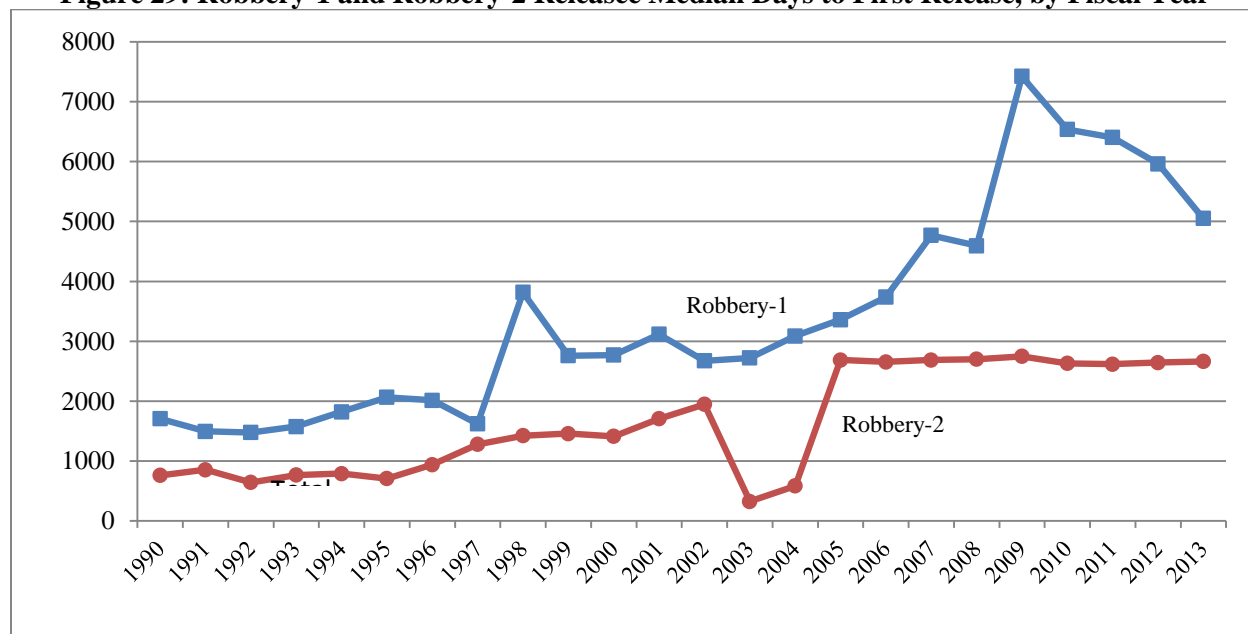
**Robbery Prison Length-of-Stay:** As stated earlier, the prison population is influenced by how many people are coming into prison and how long they stay. This portion of the report addresses the length-of-stay for offenders serving sentences on Robbery-1 or Robbery-2 charges.

In FY1996, prior to implementation of VOI/TIS in Iowa, first-release inmates serving sentences for Robbery-1 averaged 1,636 days, or 4.8 years, prior to release. Those released on Robbery-2 convictions averaged 1,077 days, or 2.9 years. In FY2009-FY2010, the 93 Robbery-2 first-releases (under VOI/TIS convictions) served an average of 2,700 days. The only two Robbery-1 releases during that period were serving terms under pre-VOI/TIS convictions. Because of the existence of the mandatory minimum term for Robbery-1, the only offenders released prior to the expiration of 17.5 years will be leaving as the result of a court order, release to Interstate Compact, or death (with the one exception noted above). The first VOI/TIS Class B inmate will be eligible for parole consideration starting in April, 2014. The earliest expiration date for any of these Class B VOI/TIS inmates is in January, 2018.<sup>34</sup>

For reference purposes, the 33 inmates serving Class C Felony Vehicular Homicide sentences who were released in FY2009-FY2010 were released on pre-VOI/TIS convictions (this offense started being covered by the mandatory 70% minimum in 2003). Their average length-of-stay was 1,375 days, or 3.8 years. Anticipated length-of-stay for those sentenced under VOI/TIS will be at least 7.0 years.

While the length of stay for Robbery-2 has remained relatively stable since FY2005, it has drastically increased for Robbery-1 since FY1997. In FY2012, the median length of stay for Robbery-2 was 2,663 days, or 7.3 years prior to release, for Robbery-1 it was 5,053 days or, 13.8 years to release (with all three of these offenders sentenced under non-70% provisions). Given the mandatory minima, it is not possible for these figures to fall below 7.0 years (2,557 days) for Robbery-2 and 17.5 years (6,392 days) for Robbery-1. These figures are both well above the medians found prior to establishment of the minimum terms. Given the disproportionate African-American representation among robbers, these long terms also contribute to racial disproportionality in Iowa's prison population. This will be addressed further later in the report.

**Figure 29: Robbery-1 and Robbery-2 Releasee Median Days to First Release, by Fiscal Year**



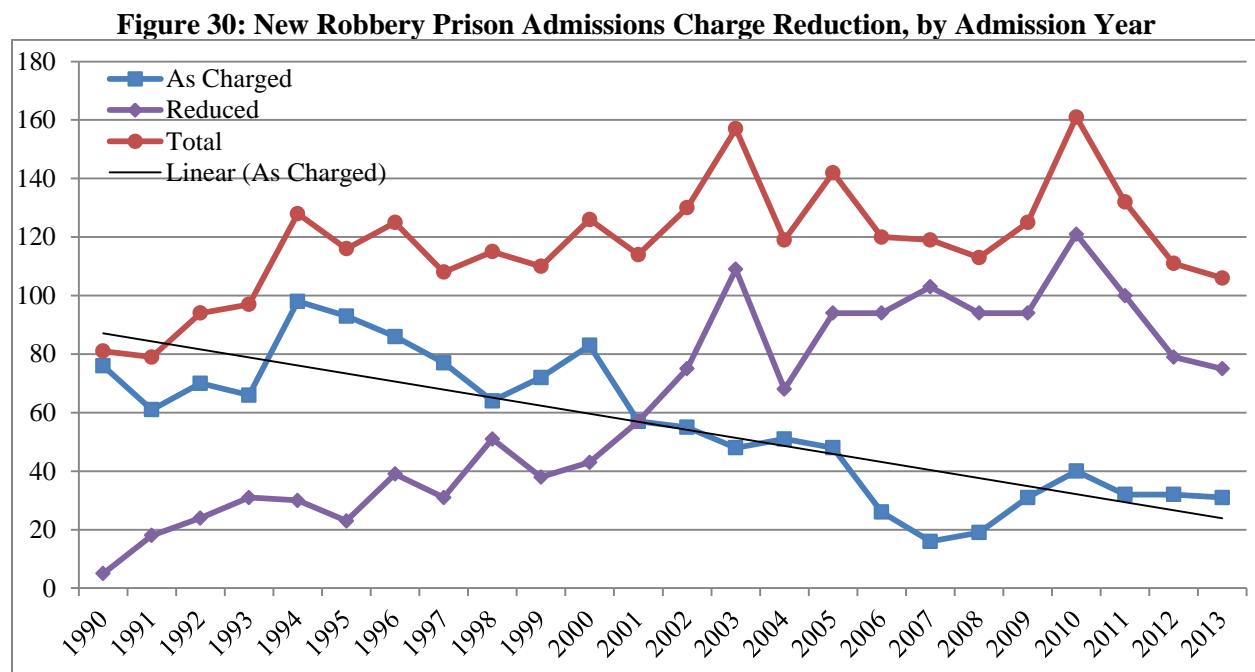
<sup>34</sup> There is one exception, a youth who entered prison at age 18 who had been sentenced as a youthful offender, with an expiration date during FY13. His offense had been committed at age 15, and as a youthful offender the mandatory minimum did not apply.

### ***Robbery Charges and Convictions Among Prison Inmates***

**Robbery Charges:** This analysis examines the robbery prison admission cohort (N=2,828) over time to examine changes in charging and plea negotiation practices prior to and following the enactment of the mandatory minimum statute sentences.

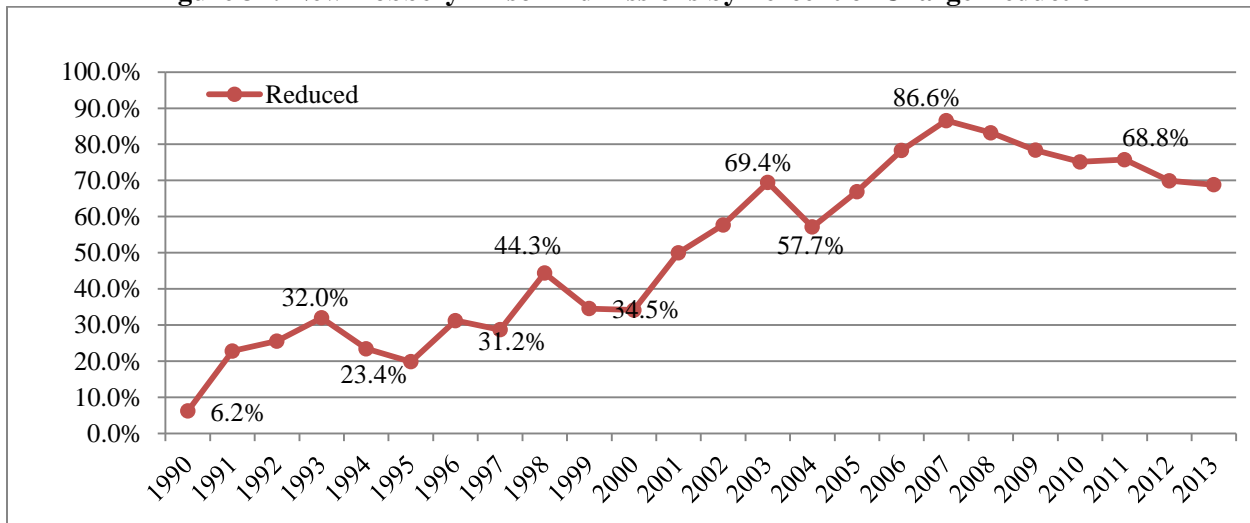
One of the claims made pertaining to the establishment of mandatory penalties is that, because of their mandatory nature, they're more likely than non-mandatory penalties to result in plea negotiation with criminal defendants. With a 20-year cohort of prison admissions for defendants charged with robbery, the current study offers an opportunity to study this contention. This is also another way to answer the question of whether the establishment of mandatory sentences ensures long incapacitation of those charged with offenses carrying mandatory terms.

Figure 30 shows admissions to prison among those charged with robbery since FY1990. The chart shows generally that the raw number of robbery charges resulting in admission to prison has increased since 1990. Note, however, that in the early 1990's most of those charged with robbery who entered the prison system were convicted of the offense with which they were originally charged, with a relatively small number of offenders entering prison on non-robbery offenses. Robbery convictions 'as charged' have decreased from FY1990-FY2013, but the number of reduced robbery charges has increased substantially. The result from this analysis suggests that the increase in reduced robbery charges may be likely influenced by the enactment of mandatory sentences



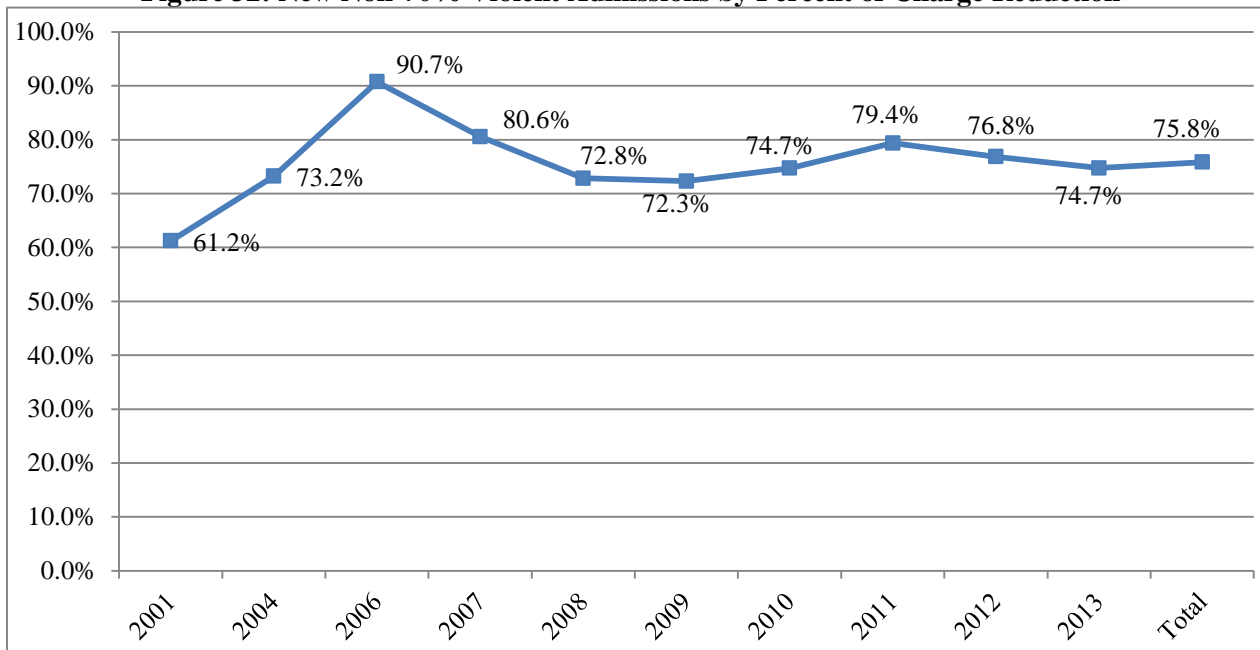
With the advent of the mandatory 85/70% terms in 1996, however, there was a decided trend away from charged robbers being convicted of the original charged offense. At the end of the studied period, in FY2013, it was much more common for those originally charged with robbery to be admitted to prison for a different offense. This is illustrated in another way in figure 31, below.

**Figure 31: New Robbery Prison Admissions by Percent of Charge Reduction**



The chart shows clearly that the extent to which charged robbers enter the prison system convicted of the offense with which they were originally charged has decreased since establishment of the mandatory term. While one is tempted to suspect the existence of a causal relationship between the two, an examination of violent non-70% admissions to prison is necessary to prove this point. An analysis of Class B and Class C non-70% offenses was conducted which examined prison admissions in FY2001 and from FY2004-FY2013. The resulting chart is presented below.

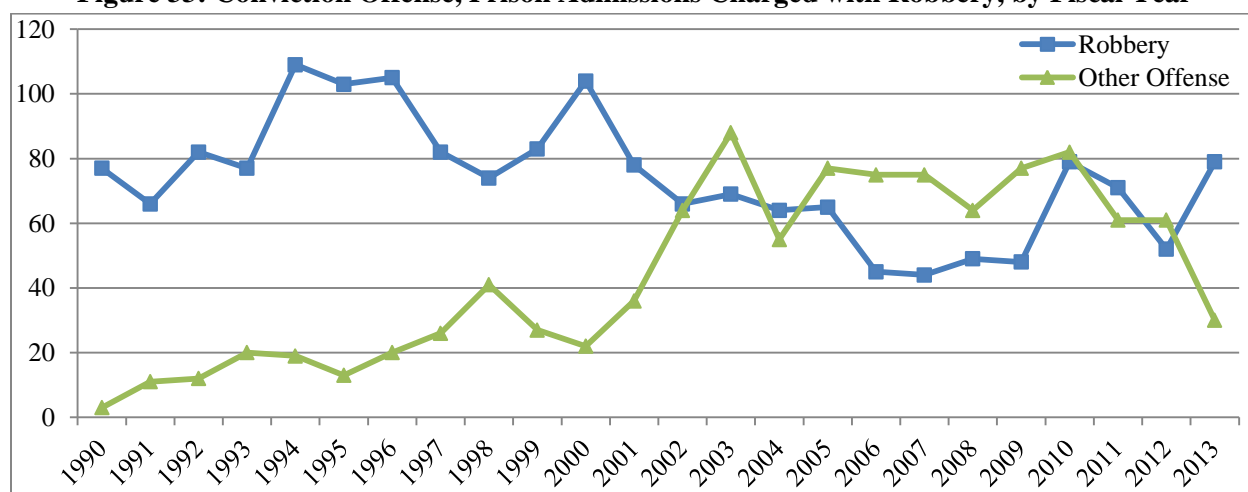
**Figure 32: New Non-70% Violent Admissions by Percent of Charge Reduction**



The chart immediately above covers a shorter time period than the chart preceding it due to the lack of reliable data on the non-70% violent crimes, but it is clear from the second chart that a high percentage of non-70% violent crime charges resulting in prison admission also are reduced at conviction. These crimes, the most frequent of which is Burglary-1 (a Class B Felony), are also violent crimes and have much in common with the 70% crimes. We are left to conclude that if establishment of the mandatory term has had an impact on plea negotiation, the impact is far from certain.

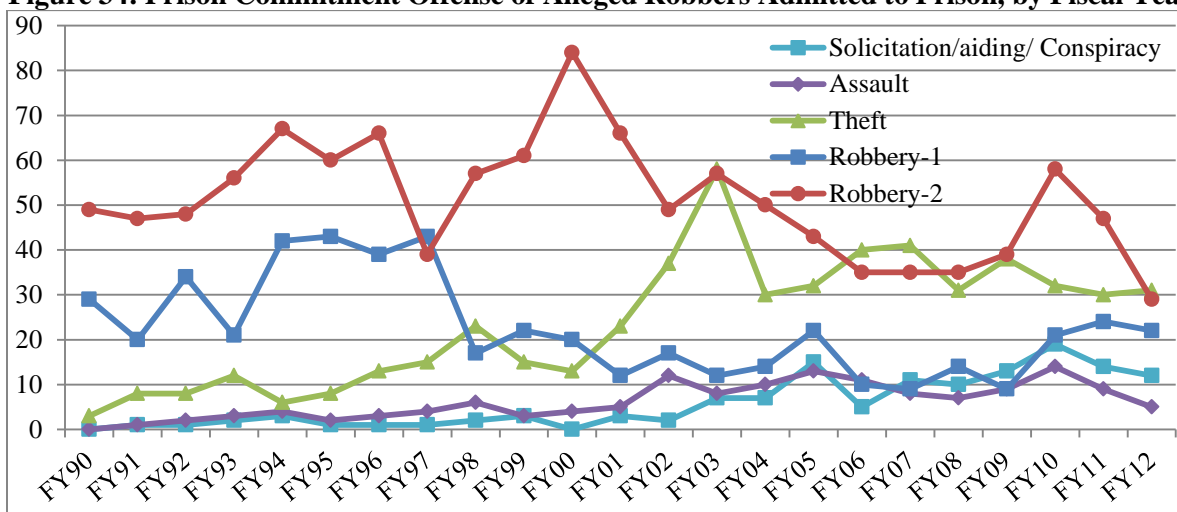
The plea negotiation phenomenon is examined further in the next two charts, the first of which shows the number of alleged robbers and whether they were admitted to prison on robbery or some other offense. The chart shows clearly that there has been a substantial change in conviction offenses since establishment of the 70% mandatory term. Since 2002 more alleged robbers have been admitted to prison on non-robbery offenses than on robbery (731 vs. 809). Again, however, one must be cautious in concluding that the change over time is causally related to establishment of the mandatory 70% term.

**Figure 33: Conviction Offense, Prison Admissions Charged with Robbery, by Fiscal Year**



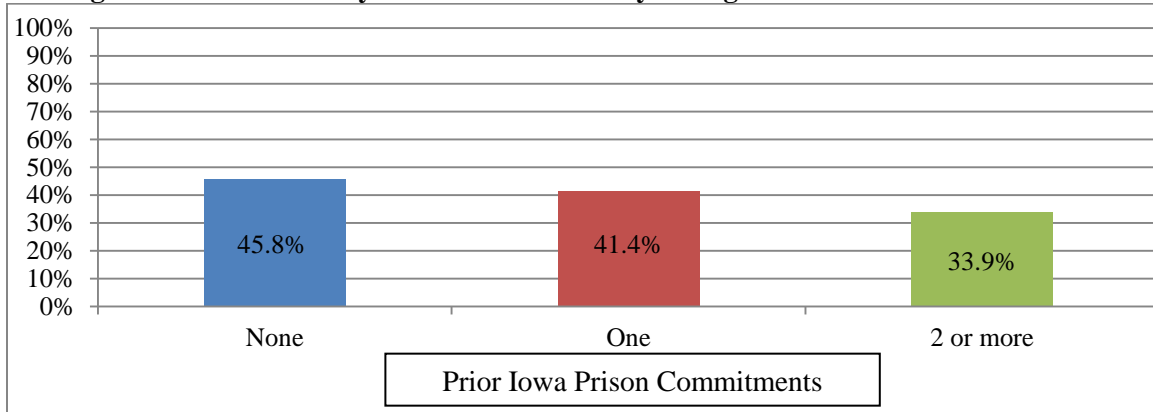
The next chart provides more specificity as to the prison admission offense for this group, illustrating the most common admission offenses for those entering prison after originally being charged with robbery. The chart shows that the most common admission offenses over the period tended to be Robbery-2. It is evident, however, that following establishment of the mandatory 70% it became much more common to reduce robbery charges to theft offenses, with these theft admissions being more prevalent than Robbery-1 admissions beginning in FY2001, and occasionally outnumbering admissions for Robbery-2 as well. Note that admissions for assault offenses and conspiracy/ solicitation/aiding and abetting also increased following implementation of the 70% mandatory terms.

**Figure 34: Prison Commitment Offense of Alleged Robbers Admitted to Prison, by Fiscal Year**



As the final step in analyzing charge reduction, we examined charge reduction with regard to prior Iowa incarceration. The prison admission cohort originally charged with robbery was split into three groups based upon prior Iowa prison commitments. Findings suggest that, while charge reduction was most common for those with no prior Iowa prison commitments (45.8 percent reduced), even about one-third of those with multiple prior commitments entered prison on the current offense under reduced charges.

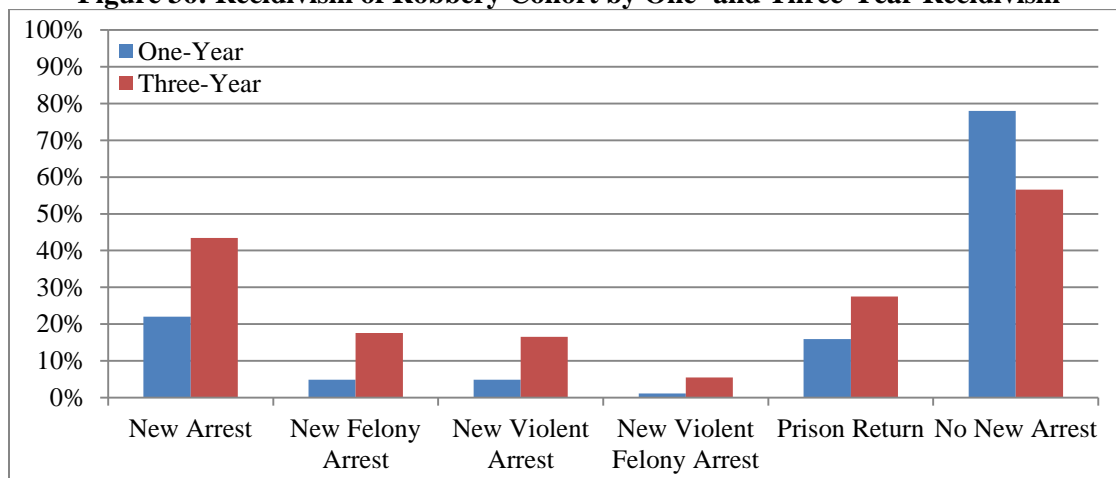
**Figure 35: New Robbery Prison Admissions by Charge Reduction and Prior Prison**



### ***Recidivism of Robbery Cohort***

Recidivism was measured at one and three years for robbery offenders exiting prison between 7/3/2006 and 5/15/2010. Recidivism information was acquired through the Iowa Computerized Criminal History (CCH) system, extracting arrest records. Two hundred-fourteen offenders were initially included in this cohort, but 25 were excluded due to the absence of a DCI or FBI number (a necessary component when using CCH data). An additional four offenders were omitted because their prison exit date did not allow for a full three years of tracking at the time recidivism information was collected. Three additional offenders were omitted because their exit from prison was due to death. The final sample included 182 offenders. All of these offenders had been committed to prison on convictions for Robbery-2.

**Figure 36: Recidivism of Robbery Cohort by One- and Three-Year Recidivism**



**Table 35: Recidivism of Robbery Cohort by One- and Three-Year Recidivism**

	One Year		Three Year		Total
	N	%	N	%	N
New Arrest	40	22.0%	79	43.4%	182
New Felony Arrest	9	4.9%	32	17.6%	182
New Violent Arrest	9	4.9%	30	16.5%	182
New Violent Felony Arrest	2	1.1%	10	5.5%	182
Prison Return	29	15.9%	50	27.5%	182

Released offenders had the highest amount of recidivism in the area of a new arrest at one (22.0%) and three years (43.4%). The likelihood that an offender would recidivate by way of either a new felony or violent arrest was low at one-year (4.9%), rising to 16-17% by the third year. Sixteen percent of the sample had returned to prison within the first year, a figure which rose to 27% by year three. Prison returns included parole and work-release revocations as well as new commitments. An offender need not have been convicted of a new charge to return to prison.

A report on violent offender recidivism released by CJJP in 2003 examined Iowa prison releases in FY1996, 1998, and 2000, using the same criteria as above in defining recidivism. The robbers followed in that study would not have been subject to the 70% mandatory minimum, as their convictions predated establishment of the mandatory terms. The Department of Corrections also acknowledges a drop in recidivism among all inmates since that period, but the comparison is still instructive. Note that the more recent group of releases showed lower rates of recidivism in virtually every category (with the only exception being one-year rate of returns to prison, which is likely due to parole and work release revocations).

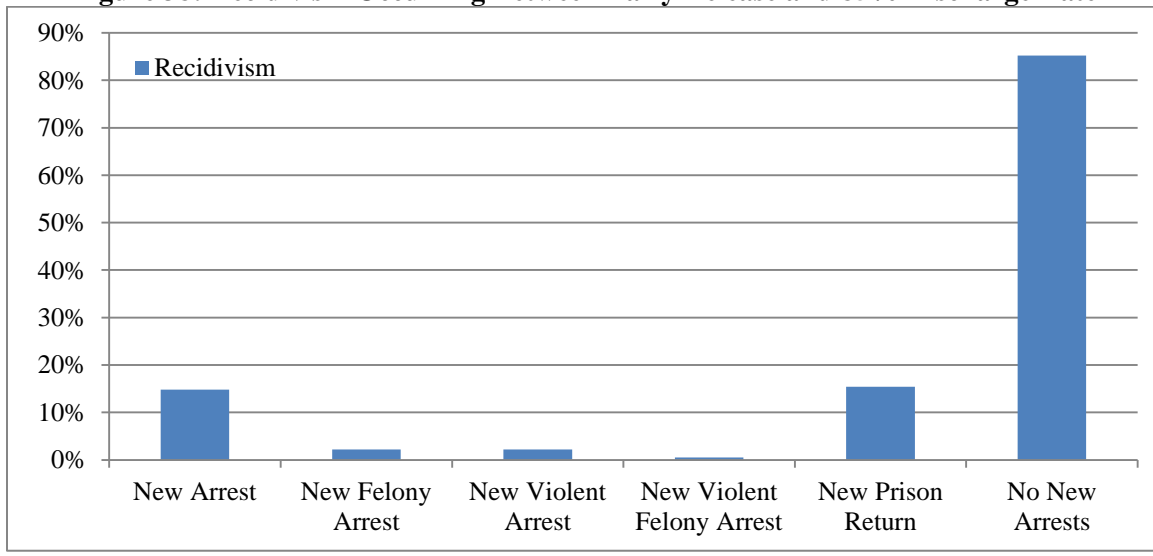
**Figure 37: 2003 Violent Offender Recidivism Report: Recidivism of Robbery Offenders Released from Iowa Prison**

Criterion	Crime	N	Year 1	Year 3
Any New Arrest	Robbery-1	90	32.2%	64.4%
	Robbery-2	174	33.3%	67.8%
Any New Felony Arrest	Robbery-1	90	18.9%	44.4%
	Robbery-2	174	17.2%	40.2%
New Violent Arrest	Robbery-1	90	15.6%	34.4%
	Robbery-2	174	15.5%	36.8%
New Violent Felony Arrest	Robbery-1	90	10.0%	27.8%
	Robbery-2	174	9.8%	26.4%
Prison Return	Robbery-1	91	17.6%	47.3%
	Robbery-2	176	15.9%	41.5%

Additional recidivism data were examined to determine the extent to which the change from “flat” 85% sentences to the possibility of release at 70% jeopardized public safety. The chart and figures below assess recidivism which occurred between an offender’s prison exit and their original 85% discharge date. This analysis provides insight into the number of crimes that would otherwise not have been committed had these offenders not had the opportunity for early release.



**Figure 38: Recidivism Occurring Between Early Release and 85% Discharge Date**



**Table 36: Recidivism Occurring Between Early Release and 85% Discharge Date**

	N	%
New Arrest	27	14.8%
New Felony Arrest	4	2.2%
New Violent Arrest	4	2.2%
New Violent Felony Arrest	1	0.5%
New Prison Return	28	15.4%
No New Arrests	155	85.2%
Total	182	

The majority of offenders did not have a new arrest between their actual release and their 85% discharge date, suggesting that the establishment of the “window” for release between 70% and 85% had little impact on public safety.

### ***Racial Implications of the 70% Mandatory Minimum Sentence***

This final section examines racial aspects within the robbery prison admission cohort analyzed previously. The initial portion of this analysis presents Uniform Crime Report data on robbery arrests in Iowa, followed by offender-based data on convictions from the Iowa Court Information System. The final portion identifies the number of African-Americans admitted to prison by sentence type from FY1997-FY2013 following enactment of the mandatory sentencing statute and then examines conviction discrepancies by race and their influence on the African-American prison population using the robbery prison admission data from 2/13/1970-6/29/2013 by period.

The Public Safety Advisory Board (PSAB) suggests interpreting the results of this report with caution. This report indicates that robbery in Iowa is frequently committed by African-Americans, as suggested by arrest data. Data pertaining to prison admissions for robbery also indicate a high percentage of African-Americans. While this high rate of incarceration may suggest to some that Iowa's justice system is discriminatory, we have found little evidence of that here, as rates of conviction and charge reduction appear similar for African-Americans and Caucasians.

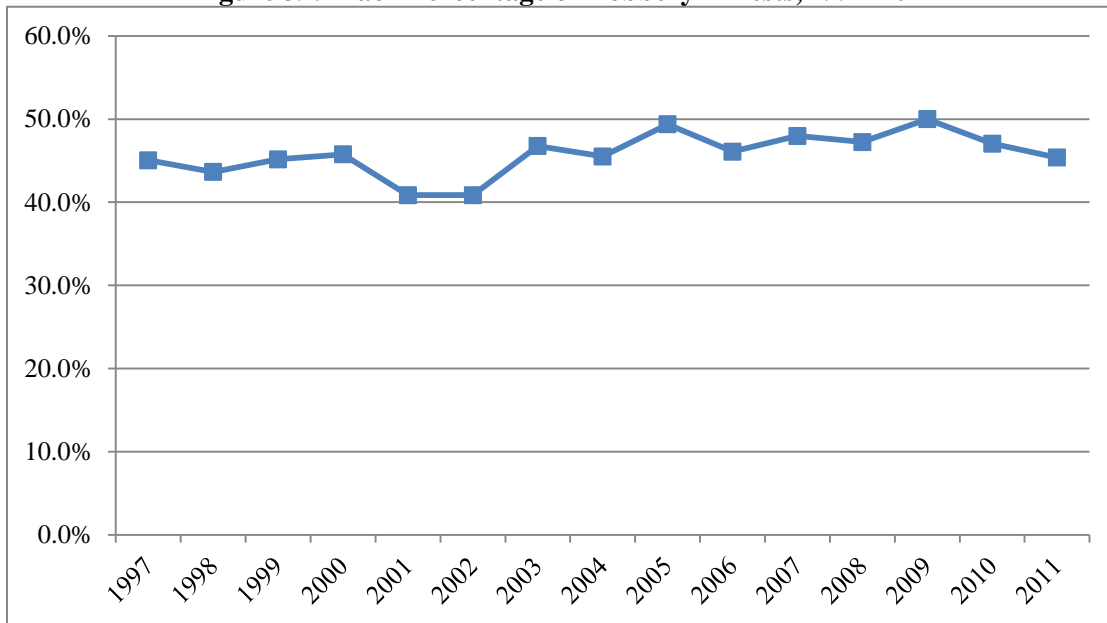
The table immediately below and the accompanying chart show the number of African-American arrests for robbery in Iowa, as reported by the Uniform Crime Reports:

**Table 37: Total Robbery Arrests in Iowa, 1997-2011**

UCR Robbery Arrests			
Year	Total	Black	Percentage
1997	373	168	45.0%
1998	362	158	43.6%
1999	392	177	45.2%
2000	330	151	45.8%
2001	350	143	40.9%
2002	426	174	40.8%
2003	385	180	46.8%
2004	389	177	45.5%
2005	403	199	49.4%
2006	345	159	46.1%
2007	419	201	48.0%
2008	417	197	47.2%
2009	448	224	50.0%
2010	304	143	47.0%
2011	227	103	45.4%
+97-02	2,233	971	43.5%
+03-11	2,952	1,403	47.5%
Total	5,343	2,451	45.9%

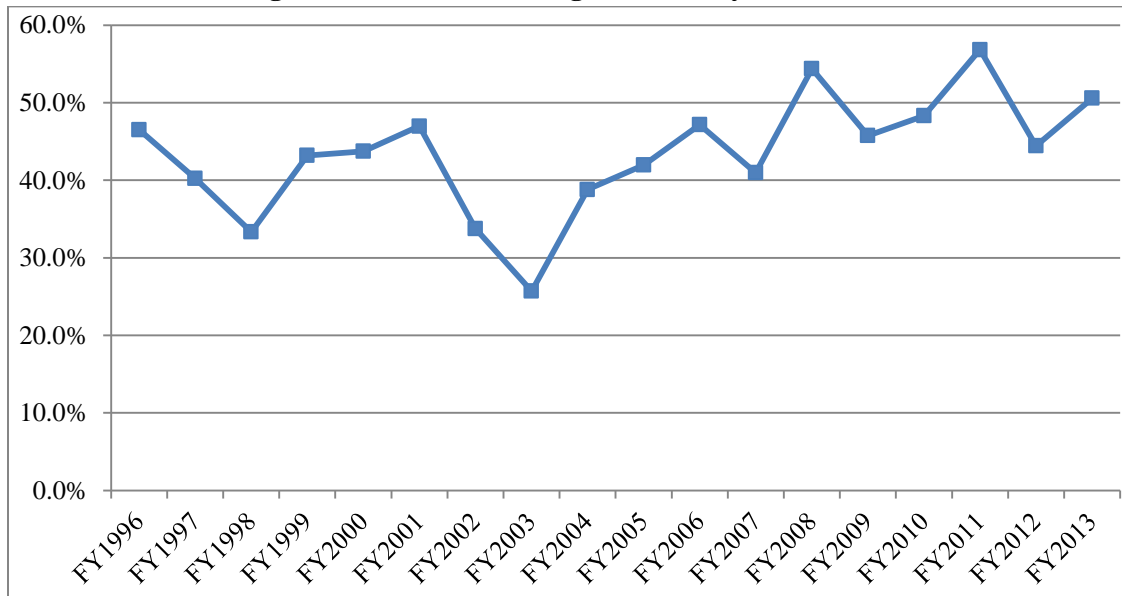
Source: Iowa Uniform Crime Reports

**Figure 39: Black Percentage of Robbery Arrests, 1997-2011**



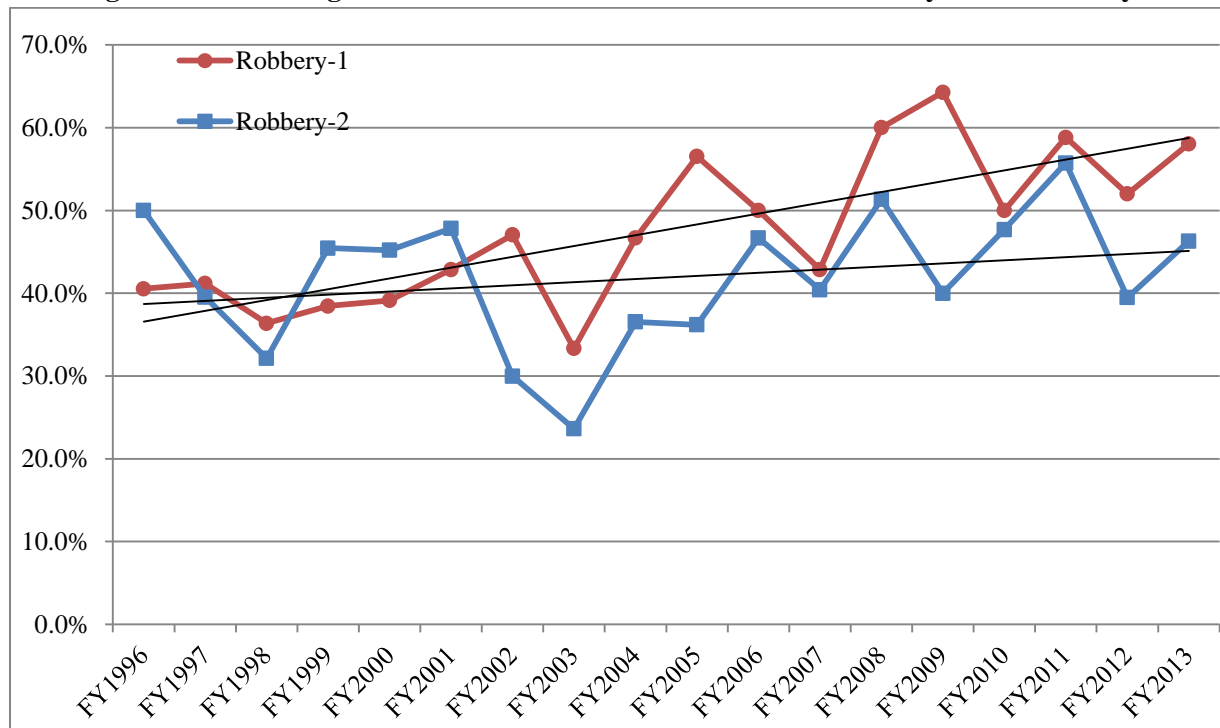
The next table illustrates the percentage of total robbery convictions accounted for by African-Americans in Iowa. Note that the conviction percentages fall in the same range as the arrest percentages.

**Figure 40: Black Percentage of Robbery Convictions**



The final chart pertaining to adjudication shows the African-American percentage of Robbery-1 and Robbery-2 convictions in Iowa between FY1996 and 2013. This information, coming from the Justice Data Warehouse, suggests that the African-American percentage of Robbery-2 convictions has risen slightly over the period, while a larger increase has occurred in the percentage of Robbery-1 convictions. The trend lines for each show the extent of change over time.

**Figure 41: Percentage of African-American Convictions for Robbery-1 and Robbery-2**



The table immediately below shows that African-Americans have been overrepresented among those entering prison after being charged with robbery, regardless of whether the original offense was Robbery-1 or Robbery-2. Note also, however, that the following table, which shows the type of sentence resulting from the original robbery charge, shows that African-Americans have been significantly more likely to be convicted of an offense resulting in a 70% sentence. Please note that the information below refers to offenders admitted to prison between 2/13/1970- 6/30/2012.

**Table 38: New Prison Admissions Stemming from Robbery Charges, by Race**

	Robbery-1		Robbery-2		Total	
	N	%	N	%	N	%
Caucasian	888	55.7%	909	55.8%	1,797	55.7%
African-Americans	668	41.9%	682	41.8%	1,350	41.9%
Other	38	2.4%	38	2.3%	76	2.4%
Unknown	0	0.0%	1	0.1%	1	0.0%
Total	1,592	100%	1,630	100%	3,224	100%

*\*Significant at a 95% confidence interval.*

**Table 39: New Prison Admissions Stemming from Robbery Charges, by Race and Sentence Type**

	70% Sentence		Non-70% Sentence		Total	
	N	%	N	%	N	%
Caucasian*	512	49.8%	1,284	58.5%	1,796	55.7%
African-Americans*	482	46.9%	867	39.5%	1,349	41.9%
Other	33	03.2%	43	2.0%	76	2.4%
Unknown	1	00.1%	0	0.0%	1	0.0%
Total	1,028	100%	2,194	100%	3,224	100%

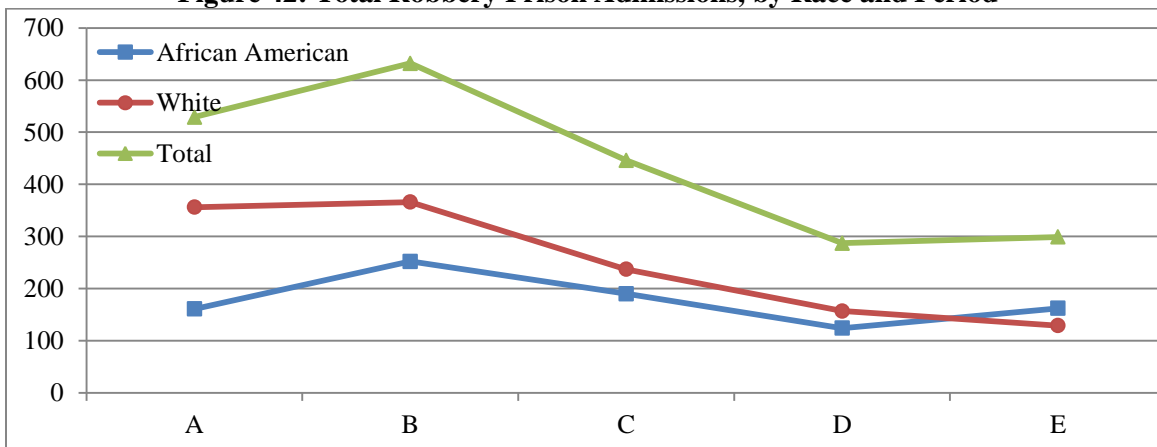
*\*Significant at a 95% confidence interval.*

There were no significant differences in the racial make-up of the arresting Robbery-1 and Robbery-2 cohorts, but African-Americans were overrepresented in both groups. Caucasians had higher percentages of both Robbery-1 and Robbery-2 arrests compared to African-Americans but, African-Americans received 70% sentences at significantly higher rates than Caucasians (46.9% vs. 39.5%).

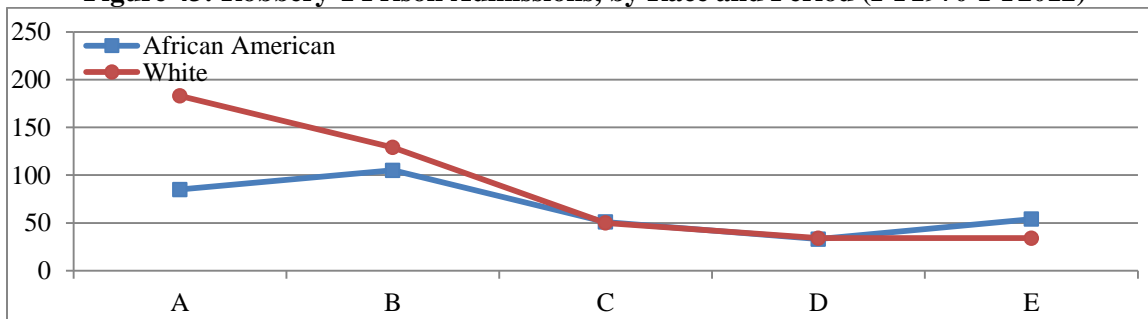
Specifically observing robbery prison admissions, we also see a higher proportion of African-Americans entering prison in recent years for Robbery-1 and Robbery-2. Should this trend continue, we can expect Iowa's prison population to continue to grow in the number of African-Americans, especially those charged with Robbery-1 as the length-of-stay is continually greater than Robbery-2.

The following charts include information specifically on conviction trends for Robbery-1 and Robbery-2 individually, by race. The number of Robbery-1 convictions declined initially from period A-C for both African-Americans and Caucasians, but has remained somewhat stable for the past 15 years. However, the number of African-Americans entering prison on Robbery-1 convictions during the most recent period has surpassed that of whites. Prison admissions resulting from Robbery-2 convictions have been declining since period B. However, the discrepancy between white and African-American admissions has slowly decreased as the number of white offenders decreases and black offenders increase. In the final the number of African-Americans entering prison on Robbery-2 convictions exceeded that of Caucasians.

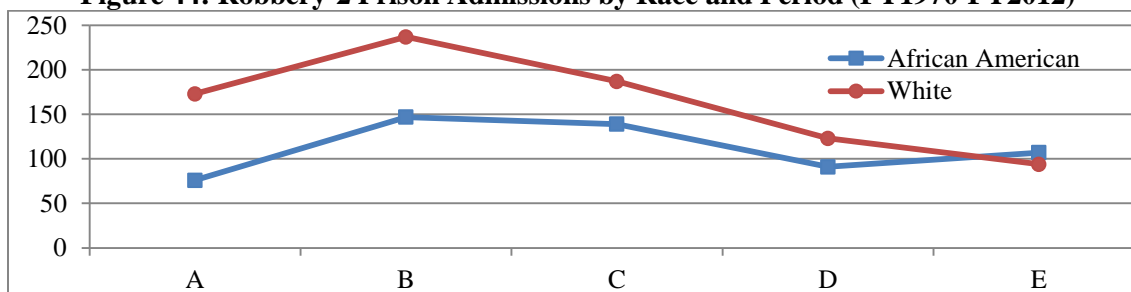
**Figure 42: Total Robbery Prison Admissions, by Race and Period**



**Figure 43: Robbery-1 Prison Admissions, by Race and Period (FY1970-FY2012)**

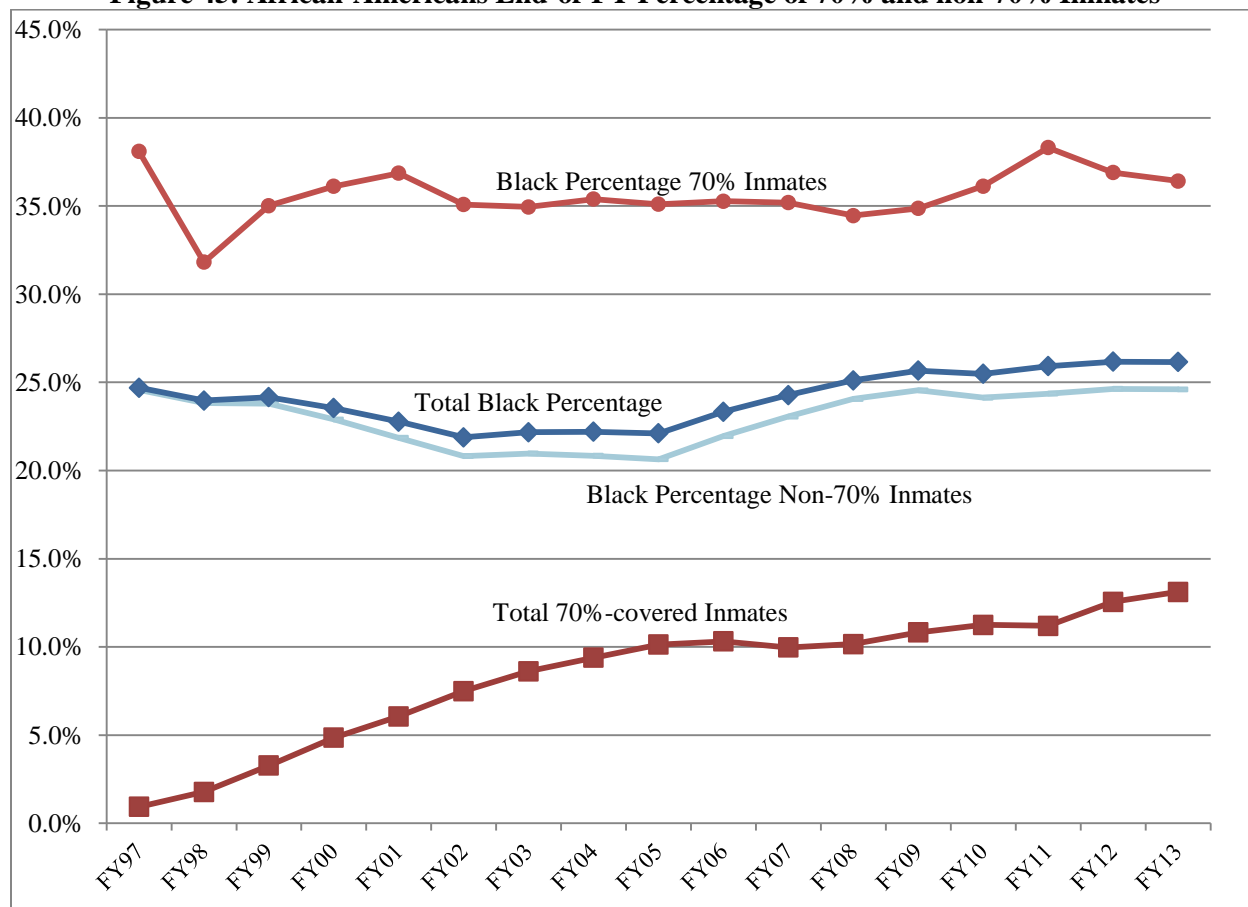


**Figure 44: Robbery-2 Prison Admissions by Race and Period (FY1970-FY2012)**



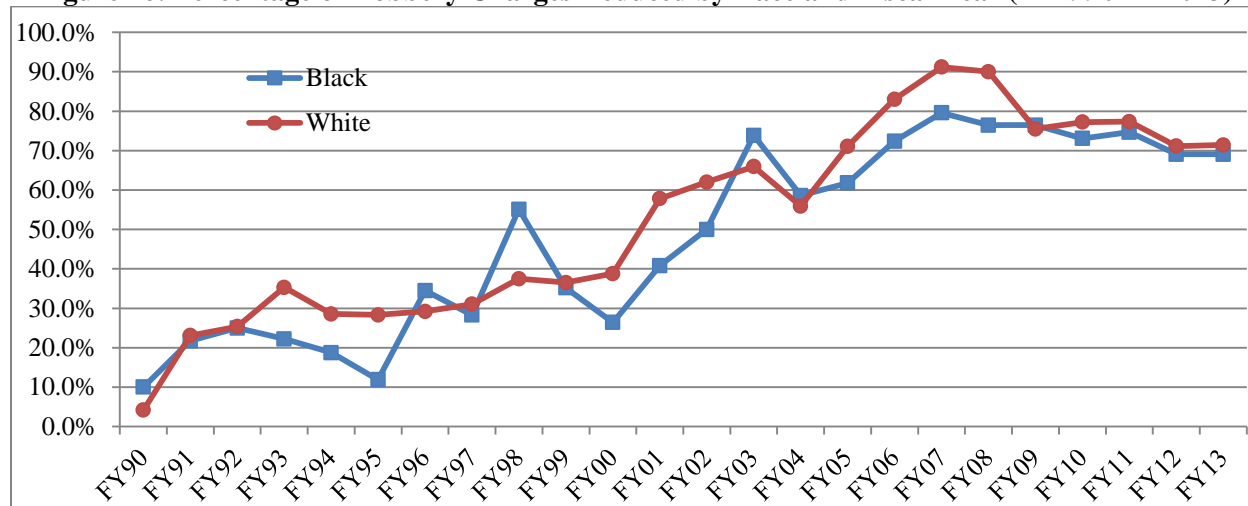
The chart below shows the African-American percentage of 70% inmates, non-70% inmates, and all inmates, and illustrates that, historically, African-Americans have entered prison on charges associated with 70% offenses at higher rates than non-70% offenses. In addition, the chart illustrates the percentage of the inmate population covered by 70% sentences. After a period of stability between FY2005 and FY2008, the percentage of 70% inmates in the population has begun rising again, and is expected to continue rising until at least 2021. With this rise in 70% inmates and the high percentage of African-Americans among 70% inmates, it will be extremely difficult for Iowa to reduce its disproportionate rate of African-American incarceration for the foreseeable future absent some vehicle to permit earlier release of 70% inmates.

**Figure 45: African-Americans End-of-FY Percentage of 70% and non-70% Inmates**



As a final note, as previously indicated, the percentage of reduced robbery charges rose between FY1990 and FY2013, most substantially following enactment of the 70% mandatory sentence statute. Similar percentages of African-Americans and Caucasians have entered prison after having been convicted of reduced charges after an arrest for robbery, although there were only four years during the period in which the percentage of reduced charges was higher for African-American admissions. Nonetheless, the trends for both races are similar.

**Figure 46: Percentage of Robbery Charges Reduced by Race and Fiscal Year (FY1990-FY2013)**



Finally, the chart below presents information on the amount of time served in prison prior to release for those convicted of Robbery-2. No data on Robbery-1 releases is presented because too few have been released under the 70% provisions to permit valid comparison. The chart first shows that there has been a demonstrable change in the amount of time spent in prison by those convicted of Robbery-1. Perhaps more important, however, the chart shows similar patterns for white and black offenders. While the increase in average time served may have a disproportionate impact on African-American offenders because of their over-representation among robbery offenders, it appears that white and black robbers have similar length-of-stay in Iowa's prisons.

**Figure 47: Median Length of Stay in Days for Robbery-2, by Pre- and Post-70% Law, by Race**

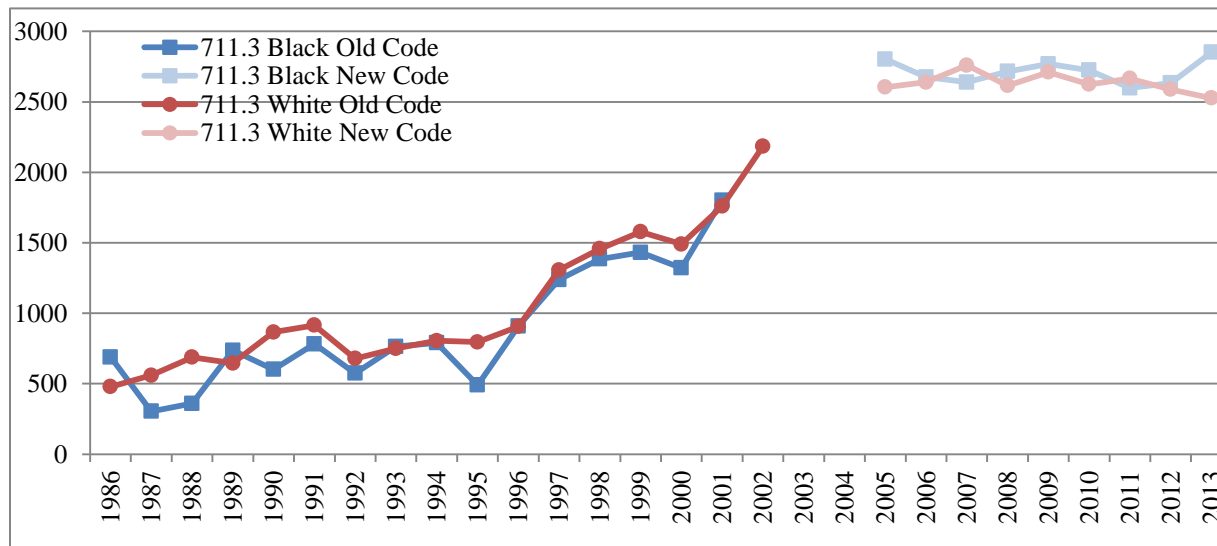


Chart includes only those years with five or more releases

## X. Conclusion and Discussion

The findings of this report suggest that the existence of mandatory minimum sentences has ramifications throughout the justice system. While it is not clear if the existence of mandatory minimum terms has an actual impact on the incidence of the proscribed crimes, it is evident from the analyses here that charging practices and court dispositions changed markedly in Iowa following establishment of 70% mandatory minimum terms. Analysis of imprisoned offenders originally charged with robbery indicates that most offenders admitted to prison prior to the establishment of the mandatory minimum were convicted of the originally-charged offense, while a substantial majority of those imprisoned after establishment of the mandatory term came to prison convicted of reduced charges. While it is not clear that these changes have been caused by the establishment of the mandatory minimum term, it is likely that a relationship exists.

While some might argue that the exercise of discretion in offering reduced charges is selective, benefitting only those who don't "deserve" a long mandatory sentence, data here suggest that the extensiveness of an offender's criminal history, or use of a weapon, are only marginally related to whether an offender originally charged with robbery enters prison on reduced charges.

Prosecutorial discretion can justifiably divert some individuals who may not pose a high risk to the public from serving extended prison sentences. Some studies argue that this discretion can positively influence the varying disparities in mandatory minimum sentencing in that prosecutors can use their discretion to seek lesser charges which circumvent mandatory minimum sentencing for some offenders.<sup>35</sup> This report found evidence to support this claim, as the number of reduced robbery charges has been steadily increasing. Along with this finding, this analysis also found several other interesting findings summarized in the text below.

The over-representation of African-Americans in Iowa's prison population has been an ongoing issue for many years. Results here show that African-Americans are disproportionately represented among those entering prison as the result of robbery charges. Higher rates of African-Americans enter prison on 70% sentences than on other charges not carrying mandatory sentences. The combination of this high percentage and long mandatory minimums has resulted in a gradually increasing percentage of African-Americans in Iowa's prisons long after Iowa was recognized as having one of the Nation's highest rate of African-American imprisonment. While this report has not suggested the existence of any biased decision-making pertaining to robbery offenses, the disproportion is nonetheless unsettling.

The 70% mandatory minimum sentence was established under the assumption that offenders receiving mandatory sentences were greater threats to public safety than other offenders. Lengthy incapacitation of these offenders, it was thought, was justified both due to the seriousness of the crimes of which they were convicted and the threat they represented to public safety. Examination of demographic and criminal history variables suggests that the 'threat' component of this assumption is not uniformly true. An analysis of scores on the Level of Service Inventory-Revised (LSI-R), a validated risk assessment tool used by the Iowa Department of Corrections to assess offender risk, indicated that offenders who were admitted to prison in FY 2013 on 70% sentences were actually less likely to be assessed at high risk than offenders in the general prison population. In fact, 20.2% of those serving 70% sentences were assessed at low-moderate risk compared to only 6.7% of other prisoners. Further, the criminal history sub-score on the LSI-R indicated that the 70% group also had fewer prior convictions. When one restricts comparisons to inmates serving 70% sentences and other violent felony offenders, we find that individuals serving

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<sup>35</sup> Bjerk, David. (2004). Making the Crime Fit the Penalty: The Roles of Prosecutorial Discretion Under Mandatory Minimum Sentencing. *Journal of Law and Economics*, Vol. 48, No. 2.



non-70% sentences had higher LSI-R scores than those serving 70% sentences. Similarly, offenders serving 70% sentences had significantly lower-criminal-history sub-scores than violent felony offenders.

Another surprising finding relates to the age of offenders entering prison on 70% sentences. Among the age categories studied in the report, a significantly higher percentage of those serving 70% sentences in FY2013 were aged 18 and under (18.5% vs. 3.4%) at prison admission compared to those not serving 70% sentences. Among the 70% inmates admitted to prison during FY2013, disproportionality in age was also evident, as about thirty percent were aged 19-25, and just slightly more than one-third of those serving mandatory sentences for robbery had not completed high school, a rate that has gradually decreased over the time period studied.

Although the number of inmates serving Class C 70% sentences appears to have stabilized, the number of those imprisoned for 70% Class B felonies is forecasted to increase at least through FY 2023 due to the 17.5-year mandatory minimum sentence. This increasing population has a significant correctional and fiscal impact and will also eventually be a burden on community based corrections, as these offenders will face challenges making the transition into the community after lengthy incarceration.

Thoughtful consideration should be given to modifying mandatory sentences, including relaxing or eliminating the mandatory minimum requirement. Mandatory minimum sentences, when given to the highest risk offenders, may postpone their opportunities to offend; however, lengthy incarceration of lower risk offenders taxes correctional resources with little benefit to public safety. Utilizing validated risk assessment tools, such as the LSI-R, to assess offender risk based on criminogenic and social factors may provide a vehicle to aid prosecutorial and judicial decision-making.<sup>36</sup> While use of risk assessment is an accepted practice in Iowa in the corrections system, it is not yet an accepted practice in Iowa at sentencing. This body has previously recommended the use of validated risk assessment tools at sentencing, and there is nothing here to support changing that position.

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<sup>36</sup> Division of Criminal and Juvenile Justice Planning. (2011). Outcome of Mandatory Minimum Sentences for Drug Traffickers.

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# An Analysis of Child Kidnapping in Iowa

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*CJJP staff would like to extend special recognition to the victims of kidnapping and their families and friends. It is our hope that the data provided in this report will help to inform policymakers as they thoughtfully deliberate future courses of action.*

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## **Public Safety Advisory Board Recommendations**

While child kidnapping in Iowa is rare, the analysis of child kidnapping and review of the effectiveness of kidnapping laws reveals weaknesses in Iowa's Criminal Code. Currently, the Code does not distinguish between adult and child victims and does not provide for penalty enhancements for repeat offenders. The PSAB believes Iowa's Criminal Code should be strengthened by addressing these weaknesses. After careful consideration, the PSAB recommends the following revisions to Iowa Code §710.3.

Iowa Code §710.3 is narrowly defined and rarely imposed, as it penalizes only kidnapping involving a ransom or dangerous weapon. This section of the Code should be revised to include language making non-parental/custodial kidnapping of a child/minor or any subsequent kidnapping conviction an automatic Class B felony subject to the mandatory minimum contained in §902.12. If provisions specifically addressing the kidnapping of a child/minor or a system of graduated penalties for repeat offenders had been in place in 1991, and had the offender received consecutive sentences (as was true with the original convictions), Michael Klunder would have remained incarcerated for a minimum of 17 additional years. Additionally, policymakers should clearly define the age of the child/minor so as not to exclude minor victims over the age of 14, as many kidnapping victims are in their mid-teens.



## **Executive Summary**

### **Background**

In July 2012 the Iowa Legislative Council requested the Public Safety Advisory Board (PSAB) provide recommendations to the General Assembly relating to crimes against children. This request came in response to the high profile kidnapping of two girls and subsequent murder of one by Michael Klunder. The PSAB directed the Iowa Department of Human Rights, Division of Criminal and Juvenile Justice Planning (CJJP) to provide an analysis of child kidnapping and review of the effectiveness of Iowa kidnapping law.

### **Iowa Child Kidnapping Cases Disposed Calendar Years 2002-2012**

Over the last ten years, Iowa has had very few felony level child kidnappings (n=17). The data show all cases involved a male offender (n=17) and nearly always a female victim (n=16). The greatest proportion of victims was between the ages of 13-16 years (35.3%). The largest number of kidnappings was committed by acquaintances (n=7) with equal numbers of child kidnappings committed by family members (n=5) and strangers (n=5). Very few children were physically injured (n=2) however; most were sexually assaulted (n=13). Most offenders (n=14) had at least one prior charge for a violent offense but only four had a prior sex offense conviction.

### **Analysis of the Justice System in the Michael Klunder Case**

After thorough review of this case, it is evident that efforts were made by the sentencing Judge and the Board of Parole to incapacitate Offender Klunder for the longest period of time permitted by statute. The Judge in the first and second Klunder kidnapping cases ordered his sentences to be served consecutively in order to maximize incapacitation and the Board of Parole delayed work release until a few months before the expiration of his sentence. Klunder did not meet the criteria for civil commitment as a sexually violent predator. Upon release he was placed on the Iowa Sex Offender Registry for ten years as a Tier II offender and was subject to bi-annual reviews to verify relevant information (e.g., residency, employment). It is evident that Klunder's release was due not to lax parole policies, but rather the provisions in the Criminal Code pertaining to the accrual of earned time while an offender is incarcerated.

## Introduction

On July 29, 2013, the Iowa Legislative Council made a request to the Public Safety Advisory Board (PSAB), pursuant to Iowa Code §216A.133A, to provide recommendations to the General Assembly relating to crimes against children. This request came in response to the high profile kidnapping of two girls and subsequent murder of one, Kathlynn Shepard, by suspect Michael Klunder. The Iowa Legislative Council specifically requested that the PSAB provide:

1. Information regarding what changes have occurred in Iowa law since Michael Klunder was sentenced in 1992 and whether these changes could have impacted any aspect of Klunder's sentence.
2. Specific legislative proposals relating to crimes against children that would avoid someone like Klunder having the opportunity to commit more heinous crimes against our children.

The purpose of this report is to provide information to the PSAB concerning the number and nature of child kidnappings, including a review and analysis of the effectiveness of Iowa law in protecting children. While this report's main focus is on child kidnappings, it should be noted that child victims have represented only a small proportion (10.2%) of felony kidnapping cases disposed in the State of Iowa over the last ten years, as shown in Table 1. Further, the report deals primarily with the three classes of kidnapping noted in the table rather than addressing all the variations of kidnapping dealt with in Iowa Code Chapter 710 (e.g., violating custodial orders).

Table 1. Class, Offense Description, of Kidnapping Convictions between CY2002-2012, by Victim Status

Class	Description	Child		Adult		Total	
		N	%	N	%	N	%
A Felony	Kidnapping 1 <sup>st</sup>	5	13.9%	31	86.1%	36	100%
B Felony	Kidnapping 2 <sup>nd</sup>	2	11.8%	15	88.2%	17	100%
C Felony	Kidnapping 3 <sup>rd</sup>	10	08.8%	103	91.2%	113	100%
Total		17	10.2%	149	89.8%	166	100%

*One unknown, not included*

*Table shows victim count. One case had more than one conviction for the same adult victim*

## Literature Review

The federal Office of Juvenile Justice and Delinquency Prevention reports that “kidnapping makes up less than 2 percent of all violent crimes against juveniles reported to police.”<sup>37</sup> While this type of crime is rare, extensive research has been completed on the typologies of child kidnappers. Presented below is an overview of different types of child kidnapping.

### ***Familial Abductions***

Familial abductions are the most common type of kidnapping and involve the abduction of a child by a family member. The National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART) reports that family kidnapping constitute a large portion of abductions involving children, with about 203,900 estimated cases occurring nationally in 1999.<sup>38</sup> While this report is one of the best national estimates for the number of missing children it should be noted that the number provided is an estimate and based on broad criteria (e.g. reported and unreported incidences).<sup>39</sup>

Family abductions can include custodial kidnappings, which are likely to involve one of two scenarios: a kidnapping in which a child is detained for longer than normal period (in violation of a custodial agreement) or a kidnapping in which a child is detained or transported to another location for an indefinite period of time with intentions of keeping the child long-term. Familial abductions are much less deadly than non-familial abductions, although other types of trauma such as emotional or psychological trauma are reported.

The motive for custodial kidnappings may vary. In some instances, a child is taken by a parent seeking a stronger relationship with the child. While positively intended, this scenario can damage a child, particularly if the abducting adult has mental or substance abuse issues.

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<sup>37</sup> Finkelhor, D. & Ormrod, R. (June, 2000). Kidnappings of Juveniles: Patterns from NIBRS. Office of Juvenile Justice and Delinquency Prevention. Juvenile Justice Bulletin. Retrieved from [http://www.missingkids.com/en\\_US/archive/documents/kidnapping\\_juveniles.pdf](http://www.missingkids.com/en_US/archive/documents/kidnapping_juveniles.pdf)

<sup>38</sup> Sedlak, A. J., Finkelhor, D., Hammer, H., & Schultz D. J. (2002). National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children: National Estimates of Missing Children: An Overview. Retrieved from: <https://www.ncjrs.gov/pdffiles1/ojjdp/196465.pdf>

<sup>39</sup> Ibid.

Other familial kidnappings may involve attempts to control or punish the left-behind parent (domestic). Domestic kidnappings are abductions motivated by a dysfunction of a romantic relationship and can involve the abduction of the other adult partner, children, or both. Information pertaining to the nature of custodial and domestic kidnappings is presented in the text below.

### **Custodial Kidnapping**

Custodial/Family kidnappings involve abductions performed by a parent or family member that occur to obtain custody of a child under the age of 18. These actions are typically motivated to force custody of a child or punish the left-behind parent.<sup>40</sup> Custodial kidnappings can largely be grouped into two scenarios: a short-term custodial violation or abduction intended to establish indefinite possession of a child.

Most family abductors are biological fathers and almost half (44%) of children abducted by family were age six or younger.<sup>41</sup> Female abductors were responsible for 25% of custodial kidnappings in 1999,<sup>42</sup> a figure which is expected to rise as courts begin to reevaluate automatic maternal custody.<sup>43</sup>

“About one-third of parents who recovered [their child] said their child was abused while with the other parent; 23% reported physical abuse, 7% sexual abuse, and 5% both physical and sexual abuse. Almost one-third said the abductor had been accused of abuse before the abduction (this does not mean it was substantiated)”<sup>44</sup> About half of parental abductions last for less than one week, involving situations in which the custodial parent knew of the child’s whereabouts.<sup>45</sup> Nearly all children survive custodial kidnappings (99%).<sup>46</sup> In the rare instance that a child is killed by a custodial kidnapper, the abducting parent usually has had a history of mental illness and violence.<sup>47</sup>

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<sup>40</sup> Chiancone, J. (2002). Parental Abduction: A Review of the Literature, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

<sup>41</sup> Hammer, H., Finkelhor, D., & Sedlak, A. J. (2002). Children Abducted by Family Members: National Estimates and Characteristics. Juvenile Justice Bulletin. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved from: <https://www.ncjrs.gov/html/ojjdp/nismart/02/index.html>

<sup>42</sup> Ibid.

<sup>43</sup> Concannon, D. M. (2008). Kidnapping: An Investigator’s Guide to Profiling. Amsterdam: Elsevier.

<sup>44</sup> Greid, G. L. & Hegar, R. L. (1993). *When Parents Kidnap: The Families Behind the Headlines* (p. 147). New York: The Free Press.

<sup>45</sup> Ibid.

<sup>46</sup> O’Brein, S. (2008). *Child Abduction and Kidnapping*. New York: Chelsea House.

<sup>47</sup> Greid, G. L. & Hegar, R. L. (1993), op. cit.

### **Domestic Kidnapping**

Domestic kidnappings are defined as, “an abduction by or on behalf of an individual with whom the victim has or had a familial or romantic relationship.”<sup>48</sup> Some custodial kidnappings are domestic kidnappings and have roots in domestic violence. About one-third (33%) of offenders target and take the victim’s children (domestic kidnappings involving adult victims are later examined).<sup>49</sup> Unlawfully taking a child becomes the ultimate form of abuse and control aimed at punishing the left-behind parent.

Surprisingly, some batterers are able to obtain joint custody of a child despite perpetrating domestic violence. “Research suggests that in cases where domestic violence is an issue, batterers are actually more likely to obtain visitation rights than nonviolent fathers”.<sup>50</sup> This is because batterers are astonishingly successful in their abilities to persuade judges about the merits of their custodial claim.<sup>51</sup> Zorza reports that “abusive husbands appear to take a degree of pleasure from the ‘games playing’ of court proceedings. They often seek outcomes in which they have no genuine interest”... in child custody and that “the motive is to prolong their control over, intimidation of, and involvement with their ex-partners; the children are no more than a means to an end.”<sup>52</sup>

Unfortunately, history suggests that the justice system has a difficult time identifying abuse in a relationship because of suspicion that abuse claims may be used to gain child custody. Conversely, research suggests that the degree and level of abuse in a relationship is often understated and underrepresented by victims. The existence of domestic abuse helps not only to explain the custodial kidnapping of a child but also kidnapping cases in which a domestic adult partner is abducted.

Some studies indicate that “parents at risk for filicide share many of the same characteristics as battering parents.”<sup>53</sup> Filicide is defined as “the act of killing one’s son or daughter,”<sup>54</sup> and can be grouped into three categories: those committed in response to a real or perceived ‘rational’ threat,

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<sup>48</sup> Concannon, D. M. (2008), op. cit., p. 25.

<sup>49</sup> Ibid.

<sup>50</sup> O’Sullivan, C. (2000). Estimating the population at risk for violence during child visitation. In Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child Custody and Domestic Violence: A Call for Safety and Accountability* (p. 20). Thousand Oaks, CA: Sage.

<sup>51</sup> Zorza, J. (1995). How abused women can use the law to help protect their children. In Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child Custody and Domestic Violence: A Call for Safety and Accountability* (p. 20). Thousand Oaks, CA: Sage.

<sup>52</sup> Ibid., p. 20.

<sup>53</sup> Hickey, E. W. (2003). *Encyclopedia of Murder and Violent Crime* (p. 81). Thousand Oaks CA: Sage

<sup>54</sup> <http://dictionary.reference.com/browse/filicide>.

those committed as a result of an interpersonal deficit (e.g. offender intelligence), or manslaughter. The motivations for males who commit filicide are usually relational (jealousy or rejection by victim) or disciplinary; while female motivations tend to be the result of unwanted children, altruism, or psychosis. Familicide “refers to the killing of multiple members of one’s family, if not the entire family.”<sup>55</sup> While familial child kidnapping does not typically result in death, it is important to acknowledge the potential for filicide or familicide.

### ***Non-Familial Abductions***

Non-familial child abductions involve the kidnapping of a child by a stranger or acquaintance. NISMART defines non-familial abductions as abductions which occur “when a nonfamily predator takes a child by the use of physical force or threat of bodily harm or detains a child for at least one hour in an isolated place by the use of physical force or threat of bodily harm without lawful authority or parental permission; or when a child who is younger than 15 years old or is mentally incompetent without lawful authority or parental permission, is taken or detained by or voluntarily accompanies a nonfamily perpetrator who conceals the child’s whereabouts, demands ransom, or expressed the intention to keep the child permanently”.<sup>56</sup>

This study estimated that there were 58,200 non-family abductions in 1999. Of these cases, 22% of the victims were returned prior to anyone knowing they were missing, 57% of the victims were reported by a caretaker as missing (meaning that their whereabouts were unknown and the caretaker was alarmed and attempted to locate the child), and 21% of the abductions were reported to the police or a missing children’s agency. The number regarding non-family abductions should be particularly interpreted with caution as the authors note estimates of non-family abduction are “based on an extremely small sample of cases; therefore, its precision and confidence interval are unreliable”.<sup>57</sup>

Non-familial abductions tend to fall into three categories; predatory, stereotypical, and infant kidnappings. Predatory kidnappings are sexually motivated, while stereotypical kidnappings are more violent in nature and may not have a sexual component. Lastly, infant kidnapping is often motivated by

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<sup>55</sup> Hickey, E. W. (2003), op. cit., p. 168

<sup>56</sup> Sedlak, A. J., Finkelhor, D., Hammer, H., & Schultz, D. J. (2002), op. cit., p. 4.

<sup>57</sup> Ibid, p. 6.

the desire to have a child long-term to fulfill a parental role. Complete definitions and incidences of these kidnapping typologies are outlined below.

### **Predatory Kidnapping**

“Predatory kidnappings [involving] child victims are sexually motivated acts perpetrated by offenders who purposefully or opportunistically abduct victims to satiate their [sexual] needs. By definition, these abductors prey on those who are under 18 years of age”.<sup>58</sup> A study examining predatory kidnapping revealed that most offenders committing such child kidnappings did not know their victim (57%) and in 43% of the cases the victim and offender were acquaintances. All abductions reviewed in this study involved the transportation of a victim in a vehicle. These abductions were largely from public sites (64%), while private location abductions constituted a smaller percentage (36%). Many of the predatory child abduction cases reviewed included the use of deception or persuasion (29%), physical force (36%), and/or verbal threats (29%). About 57% of these abductions occurred between 4 PM and midnight, with the majority of children detained for less than 24 hours (79%).

Almost all child kidnapping cases reviewed involved sexual assault (93%) and/or physical assault (86%). Additionally, “...the sexual assault by the predatory kidnapper of the child is not the result of psychosis or other forms of severe mental illness (Axis I disorders). In the cases studied, none of the kidnappers exhibited obvious psychotic symptoms, such as delusions or hallucinations”. Thirty-six percent of the reviewed cases involved victim death.<sup>59</sup> “In 76 percent of child abduction murders, the victim was killed within 3 hours of the reported abduction and in 89 percent of child abduction murders the victim was killed within 24 hours.”<sup>60</sup> In cases where the victim survived, 29% were released by the offender, 14% escaped and 14% were saved via law enforcement intervention.<sup>61</sup>

### **Stereotypical Kidnappings**

Only a small proportion of predatory kidnappings involving children reflect stereotypical kidnappings. “A stereotypical kidnapping occurs when a stranger or slight acquaintance perpetrates a nonfamily abduction in which the child is detained overnight, transported at least 50 miles, held for ransom,

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<sup>58</sup> Concannon, D. M. (2008), op. cit., p. 21.

<sup>59</sup> Ibid.

<sup>60</sup> McKenna, R., Brown K., Keppel, R., Weis J., & Skeen, M. (2006). Investigative Case Management for Missing Children Homicide Investigation. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

<sup>61</sup> Concannon, D. M. (2008), op. cit., p. 21.

abducted with intent to keep the child permanently, or killed”.<sup>62</sup> About 115 instances of stereotypical kidnapping occur annually in the United States.<sup>63</sup> Some stereotypical kidnappings are performed by serial killers who target children. “About 1 in 4 (24%) serial killers indicate that they have killed at least one child. About the same percentage (26%) indicated that they target only children. The majority (74%) of serial child killers are male and all but a few are Caucasian.”<sup>64</sup> Compared to female child serial killers, their male counterparts travel more, use blatant forms of violence, and are more likely to target strangers. Male child serial killers are more likely to be motivated for sexual reasons (68%), victim control (42%), or a combination of various motives (59%). “Approximately one fourth (23%) of serial child killers are willing to indicate that they found enjoyment or pleasure in murdering children”.<sup>65</sup>

### **Infant Kidnappings**

Kidnapping of infants is extremely rare. The National Center for Missing & Exploited Children (NCMEC) studied all infant (birth-six months) abductions by non-family members reported between 1983 and 2012.<sup>66</sup> A total of 288 abductions were examined. Only 12 of those 288 were still currently missing at the time the report was created. The report found that individuals who kidnap infants are typically overweight women who are of childbearing age (12-53). Many of these perpetrators are married or cohabitating and commonly indicate that they cannot have children or have lost a baby previously. Typical infant abductors planned the abduction well in advance by visiting maternity units or a victim’s home posing as a nurse or social worker. Abductors who kidnap an infant from a victim’s residence are more likely to be armed and target a family they encountered in a maternity unit.<sup>67</sup>

Infant abduction is most likely to occur in a health care facility (46%) followed by personal residence (41%), with the remaining abductions occurring at other locations. Of abductions occurring at health care facilities, 58% of infants were abducted from the mother’s room while 13% were abducted from the nursery or pediatric unit. Abductions occurring at the victim’s personal residence or an unspecified other location (not healthcare facility) were more likely to involve violence to the mother (28%-30%)

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<sup>62</sup>Sedlak, A. J., Finkelhor, D., Hammer, H., & Schultz, D.J. (2002), op. cit.

<sup>63</sup> Ibid.

<sup>64</sup> Hickey, E. W. (2002). Serial Murderers and their Victims. In E. W. Hickey (Ed.), *Encyclopedia of Murder and Violent Crime* (3<sup>rd</sup> ed., p. 81). Thousand Oaks, CA: Sage

<sup>65</sup> Ibid., p. 82.

<sup>66</sup> Cases reported by NCMEC, The International Healthcare Security and Safety Foundation, and Federal Bureau of Investigation: National Center for the Analysis of Violent Crime.

<sup>67</sup> National Center for Missing & Exploited Children. (2013). Infant Abductions. Retrieved from: <http://www.missingkids.com/InfantAbduction>.



than abductions that occurred at healthcare facilities (8%). This report further indicated that infants who are kidnapped are much less likely to be harmed than older kidnapping victims.<sup>68</sup> Iowa is a state with one of the lowest incidence of infant abduction, with only one reported within the last 30 years.

### ***Child's Age as a Factor***

Research suggests that victim age plays a critical role in a child's vulnerability to victimization.<sup>69</sup> Children between the ages of zero months to five years were equally likely to be abducted by men or women for emotional reasons, while children six or older were more likely to be victims of sexually motivated abductions by men. "Children aged six through 11 and those aged 15 to 17 were more likely to be abducted by acquaintances than by strangers. Conversely, children aged 12 to 14 were more likely to be abducted by strangers than by acquaintances".<sup>70</sup> Children aged 12-14 may be more vulnerable to stranger abductions than children six through 11 or 15-17 because their growing independence tends to result in reduced parental supervision. Also, "...children aged 12 to 14 are typically in a period of identity confusion and are more likely to drift from one set of peers to another, rendering them more vulnerable to approach by a stranger".<sup>71</sup>

### ***Offender Suicide***

Convictions typically result from kidnapping cases, although some of these offenses do not result in conviction due to offender suicides (particularly if a sex offense is involved). Hoffer and Shelton (2013) examined 106 child sex offenders who committed suicide (43% were child molesters). "In 26% of the cases, the offender killed himself within 48 hours of the awareness of the investigation; and in nearly half of the known cases, the offender had past/current military service and a criminal history". Most offenders provided a suicide note (68%) many of which indicated the presence of cognitive distortions.<sup>72</sup> Jeglic, Spada, and Calkins Mercade (2013) report that 11% of sex offenders in their sample attempted suicide prior to incarceration and 14% at some point in their lifetime.<sup>73</sup> This seems to indicate that sex offenders who target children may suffer from cognitive disorders which may impair their decision-making capabilities.

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<sup>68</sup> Ibid.

<sup>69</sup> Bourdreaux, M. C., Lord, W. D., & Dutra, R. L. (1999). Child Abduction: age-based analyses of offender, victim and offense characteristics in 550 cases of alleged child disappearance. *Journal of Forensic Science*, 44(3), 539-553.

<sup>70</sup> Ibid., p. 76.

<sup>71</sup> Ibid., p. 77.

<sup>72</sup> Hoffer, T. A., & Shelton, J. L. E. (2013). *Suicide among child sex offenders*. New York, NY: Springer.

<sup>73</sup> Jeglic, E. L., Spada, A., & Mercado, C. C. (2013). An examination of suicide attempts among incarcerated sex offenders. *Sex Abuse*, 25(1), 21-40.

Once apprehended, 0.5% of offenders attempt suicide while incarcerated and 2.5% attempted suicide both during and prior to incarceration. "Sex offenders who made suicide attempts were significantly more likely than those who did not make suicide attempts to have had an abusive childhood, history of psychiatric problems, intellectual impairments, male victims, and related victims".<sup>74</sup> Also, 'sex only' child sex offenders have 183 times the suicide rates of individuals in the general population, but individuals who were 'violent' child sex offenders did not have any suicides.<sup>75</sup>

Some federal policies have been established in hopes of reducing predatory kidnappings. These policies are outlined below.

## **Federal Kidnapping Policies**

### ***Child Recovery Emergency Response Systems***

America's Missing: Broadcasting Emergency Response (AMBER): The AMBER alert system was implemented in Iowa in 2003 to help recover abducted children regardless of the kidnapping circumstances.<sup>76</sup> The system calls for dissemination of key information regarding a kidnapping of a child under the age of 17.<sup>77</sup> The US Department of Justice establishes guidelines for Amber Alert reporting although issuing criteria are determined at a local level. Iowa criteria for reporting specifically state: "There is enough descriptive information about the child, the abductor, and/or the suspect's vehicle to believe an immediate broadcast alert will help."<sup>78</sup> This language was altered in July of 2013 to remove the word 'and' from the criteria following the high profile kidnapping/murder cases involving Lyric Cook, Elizabeth Collins, and Kathlynn Shepard.

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<sup>74</sup> Ibid.

<sup>75</sup> King, E., & Pritchard, C. (2005). Differential suicide rates in typologies of child sex offenders in a 6-year consecutive cohort of male suicides. *Archives of Suicide Research*, 9(1), 35-43.

<sup>76</sup> State of Iowa. America's Missing: Broadcast Emergency Response.  
[http://iowaamberalert.org/Amber\\_History/index.html](http://iowaamberalert.org/Amber_History/index.html)

<sup>77</sup> Concannon, D. M. (2008), op. cit., p. 21.

<sup>78</sup> Dalbey, B. (2013). Would Amber Alert Working Change made Difference in Evansdale Cousins, Johnny Gosch Kidnappings? Retrieved from: <http://westdesmoines.patch.com/groups/police-and-fire/p/would-amber-alert-wording-change-made-difference-in-evansdale-cousins-johnny-gosch-kidnappings>

An analysis of the AMBER alert system revealed that in 2005 there were a total of 275 alerts issued involving 338 children. About four percent (13) of children were deceased when recovered, while about one percent are still missing (3).<sup>79</sup> “As of 2006, the Amber Alert system has been responsible for the recovery of 233 children [nationally].”<sup>80</sup>

### ***Family Abduction Policies***

The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), 1997: The Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) is the most recent federal provision aimed at preventing custodial kidnappings. “This law does not dictate how interstate custody and visitation cases should be decided. Rather, it provides guidelines for determining which State has ‘jurisdiction’ or authority to hear the case and issue an Order”.<sup>81</sup> The law provides guidelines governing situations involving an initial custody determination or modification proceeding. For initial custody determinations, the state in which the child has resided for the past six months is acknowledged as the child’s home state and has primary right to propose custody. “Once a state has made an initial custody determination, only that state will have the right to modify the order so long as a party to the original custody determination remains in that state”.<sup>82</sup> Other states are required to enforce the original Order and defer any questions of Order changes to the initial Determination State.

Modifications to the original Order are only acceptable in certain situations, such as abuse experienced by the parent or child. “After an enforcement petition is filed, an order will be issued directing the other party to appear with or without the child. If possible a hearing will be held the next day after the order has been served. If the Court is concerned that the parent with physical custody will flee with or harm the child, the Court can issue a warrant to take possession of the child”.<sup>83</sup>

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<sup>79</sup> National Center for Missing and Exploited Children. 2005 Amber Alert Study. Retrieved from: [http://www.missingkids.com/en\\_US/documents/2005AMBERAlertReport.pdf](http://www.missingkids.com/en_US/documents/2005AMBERAlertReport.pdf)

<sup>80</sup> Concannon, D. M. (2008), op. cit., p. 21.

<sup>81</sup> Millennium Divorce. (2011). Interstate Custody Disputes: The UCCJEA. Retrieved from: <http://www.millenniumdivorce.com/articles-divorce/art76.asp>.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

## **Methodology**

### ***Study Sample***

The study sample was drawn from the Justice Data Warehouse (JDW), a central repository of key Iowa criminal and juvenile justice information managed by the Iowa Division of Criminal and Juvenile Justice Planning. The JDW includes data from the Iowa Computerized Criminal History (CCH) and the Iowa Court Information System (ICIS), as well as information from the Iowa Correctional Offender Network (ICON).

All cases disposed between calendar years 2002 and 2012 with a conviction for a criminal offense with a kidnapping subtype were extracted from the JDW (n=1,214). Only convictions for Iowa Code §710.2 Kidnapping in the first degree (n=36), §710.3 Kidnapping in the second degree (n=18), §710.4 Kidnapping in the third degree (n=114), and §710.10 Enticing a minor (n=153) were used in the study.

Convictions for §710.5 Child stealing (n=2), §710.6 Violating custodial order (n=49), §710.7 False imprisonment (n=604), §710.8 Harboring a runaway child (n=235), and §710.11 Purchase or sale of individual (n=3) were excluded. These subtypes were excluded because they were either custodial, voluntarily, or lower level offenses, largely involving adult victims.

### ***Offender and Victim Demographic and Crime Data***

Demographic and descriptive crime data were taken from the Iowa Correctional Offender Network (ICON), maintained by the Iowa Department of Corrections. Data obtained on offenders included first and last name, DOC, FBI and DCI numbers, sex, race and ethnicity, date of birth, and marital status. Information regarding age and sex of the victim, relationship between offender and victim, level of violence, weapon use, and if there was a sexual component to the offense were taken from pre-sentence investigations, reception reports, or arrest or trial attachments in ICON. Additionally, cases were coded to indicate if a child was witness or present during an adult kidnapping.

## ***Study Categories***

### **Offender-Victim Relationship**

Portions of this report examine the relationship between offenders and victims. Categories created to describe the offender and victim relationships are listed below.<sup>84</sup>

*Family:* An abduction which is committed by a family member. This category includes abductions by an immediate or extended family member including common-law relationships or individuals cohabiting.

*Acquaintance:* An acquaintance is an individual who has been seen regularly or with whom the child may have had some contact but does not necessarily know by name. Examples include babysitters, neighbors, custodial, school, or apartment complex workers, friends of parents, etc.

*Stranger:* An abduction which is committed by an individual who is completely unknown to the victim where the two have had no known prior contact.

### **Study Terminology**

Per Iowa Code §232.2(5) “Child means a person under eighteen years of age”.<sup>85</sup> The terms “child” and “minor” will be used interchangeably in this report, representing the same category of individuals under age eighteen.

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<sup>84</sup> Category construction was informed by Allen, E. (1998). Keeping Children Safe: Rhetoric and Reality. *Juvenile Justice Journal* 5(1). Retrieved from: <http://www.ojjdp.gov/jijournal/jijournal598/safe.html>

<sup>85</sup> The Iowa Code: <https://www.legis.iowa.gov/DOCS/ACO/IC/LINC/2013.Section.232.2.PDF>

## **Kidnapping Offenses per Iowa Code**

*§710.1 Kidnapping Defined.* A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:

- 1) The intent to hold such a person for ransom.
- 2) The intent to use such person as a shield or hostage.
- 3) The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.
- 4) The intent to secretly confine such person.
- 5) The intent to interfere with the performance of any government function.

*§710.2 Kidnapping in the First Degree.* Kidnapping is kidnapping in the first degree when the person kidnapped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse. Kidnapping in the first degree is a class "A" felony.

*§710.3 Kidnapping in the Second Degree.* Kidnapping where the purpose is to hold the victim for ransom or where the kidnapper is armed with a dangerous weapon is kidnapping in the second degree. Kidnapping in the second degree is a class "B" felony.

*§710.4 Kidnapping in the Third Degree.* All other kidnappings are kidnappings in the third degree. Kidnapping in the third degree is a class "C" felony.

*Kidnapping-1, Kidnapping-2, and Kidnapping-3 with a Sexual Component.* For purposes of determining whether the person should register as a sex offender pursuant to the provisions of chapter 692A, the fact finder shall make a determination as provided in section 692A.126.

#### *§710.10 Enticing Away a Minor*

- 1) "A person commits a class "C" Felony when, without authority and with the intent to commit sexual abuse or sexual exploitation upon a minor under the age of thirteen, the person entices away the minor under the age of thirteen, or entices away a person reasonably believed to be under the age of thirteen.
- 2) A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices away a minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.
- 3) A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person attempts to entice away a minor under the age of sixteen, or attempts to entice away a person reasonably believed to be under the age of sixteen.
- 4) A person's intent to commit a violation of this section may be inferred when a person is not known to the person being enticed away and the person does not have the permission of the parent, guardian, or custodian to contact the person being enticed away.
- 5) For purposes of determining jurisdiction under section 803.1, an offense is considered committed in this state if the communication to entice away a minor or a person believed to be a minor who is present in this state originates from another state, or the communication to entice away a minor or a person believed to be a minor is sent from this state.

#### ***Conviction Data***

Conviction data were extracted from the Justice Data Warehouse (JDW). Data obtained included the case ID, offense date, charge count, charge code, convicting charge code, convicting charge description, charge class, offense type, offense subtype, and disposition date.

Scheduled and nonscheduled violations, civil penalties, contempt, probation or parole violations with no other new charge, unknown conviction classes, and violations of city, local, or county ordinances were not included. In addition, the Interstate Identification Index (III) was consulted for arrests and charges occurring outside the State of Iowa.

## Findings

The data presented below represent cases disposed between calendar years 2002 and 2012 and are based on victim and offender counts. During this time period, there were 168 convictions for kidnapping in the First, Second, or Third degree. Two cases were excluded from the findings because: 1) victim information was unknown and 2) there was more than one conviction for the same adult victim occurring during the incident.

The data show that 151 offenders were responsible for kidnapping 166 victims (149 adults and 17 children). Eleven of these offenders were convicted of kidnapping more than one victim, with two kidnapping both an adult and child. As shown in Table 2, the greatest proportion of kidnappings, regardless of class, involved adult victims (89.8%).

Table 2. Class and Offense Description of Kidnapping Cases Disposed between CY2002-2012, by Adult/Child Victim

Class	Description	Child		Adult		Total	
		n	%	n	%	n	%
A Felony	Kidnapping 1 <sup>st</sup>	5	13.9%	31	86.1%	36	100%
B Felony	Kidnapping 2 <sup>nd</sup>	2	11.8%	15	88.2%	17	100%
C Felony	Kidnapping 3 <sup>rd</sup>	10	8.8%	103	91.2%	113	100%
Total		17	10.2%	149	89.8%	166	100%

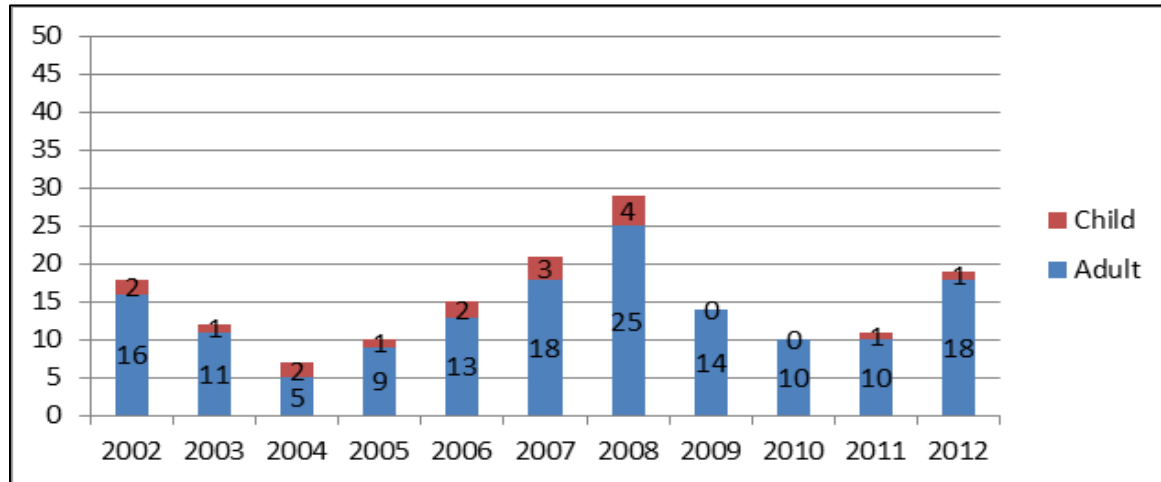
*One unknown, not included*

*Table shows victim count. One case has more than one conviction for the same adult victim*



The number of kidnapping convictions disposed between 2002 and 2012 varied by year. The greatest number of both adult and child kidnapping convictions was disposed in 2008 (25 adults and four children). After 2008, there was a steep decline in new convictions. There were no convictions disposed with a child victim in 2009 or 2010 and one each in 2011 and 2012. The number of convictions involving adult victims rose in 2012, however.

Figure 1. Number of Child and Adult Kidnapping Cases, by Calendar Year



An examination of adult kidnappings shows that females were much more likely than males to be victims of kidnapping (67.8% vs. 32.2%). A greater proportion of females were victims of first- (87.1% vs. 12.9%) and third- (64.1% vs. 35.9%) degree offenses compared to males. Second-degree kidnappings had similar proportions of female and male victims (53.3% vs. 46.7%).

Table 3. Conviction Class, Description, and Sex of Adult Kidnapping Victims

Class	Description	Female		Male		Total	
		n	%	n	%	n	%
A Felony	Kidnapping 1 <sup>st</sup>	27	87.1%	4	12.9%	31	100%
B Felony	Kidnapping 2 <sup>nd</sup>	8	53.3%	7	46.7%	15	100%
C Felony	Kidnapping 3 <sup>rd</sup>	66	64.1%	37	35.9%	103	100%
Total		101	67.8%	48	32.2%	149	100%

*One unknown, not included*

*Table shows victim count. One case has more than one conviction for the same adult victim*

In nearly one-quarter (22.8%) of the adult female kidnapping cases, a child was a witness or was present during the offense. First-degree kidnappings were most likely to involve a child witnessing or being present during the offense (29.6%).

Table 4. Adult Female Kidnappings Involving Child Witnesses, by Class

Class	Description	Female Victim	Child Witness	
		n	n	%
A Felony	Kidnapping 1 <sup>st</sup>	27	8	29.6%
B Felony	Kidnapping 2 <sup>nd</sup>	8	---	---
C Felony	Kidnapping 3 <sup>rd</sup>	66	15	22.7%
Total		101	23	22.8%

Table shows victim count.

Nearly all (96.3%) of adult kidnapping offenders were male. The majority of offenders were Caucasian (70.6%), followed by African-Americans (25.0%) and Hispanics (4.4%). About half of the offenders were under the age of 30 at the time of the offense and half were between 30 and 49 years of age. There were very few offenders age 50 or over. Only 18.4% of offenders were married at the time of the offense.

Table 5. Adult Kidnapping Offender Demography

	n	%
<b>Offender Sex</b>		
Male	131	96.3%
Female	5	3.7%
<b>Offender Race</b>		
White	96	70.6%
Black	34	25.0%
Hispanic	6	4.4%
<b>Offender Age</b>		
19 and under	15	11.0%
20-29	48	35.3%
30-39	36	26.5%
40-49	29	21.3%
50 or over	8	5.9%
<b>Marital Status</b>		
Married*	25	18.4%
Widowed	2	1.5%
Divorced	19	14.0%
Single	87	64.0%
Unknown	3	2.2%
<b>Total</b>	<b>136</b>	<b>100%</b>

\*Including common-law

### **Child Kidnapping**

There were 17 kidnapping convictions involving children between CY2002 and 2012. The following results are based on 17 offenders and 17 victims.

Offenders of child kidnappings were entirely male (100%), primarily white (76.5%), under the age of 40 (82.3%), and not married (64.7%). Interestingly, greater portions of child kidnapping offenders were married compared to adult kidnapping offenders (35.3% vs. 17.4%). Victims of child kidnapping were overwhelmingly female (94.1%), with the greatest proportion of victims between the ages of 13-16 (35.3%).

Table 6. Offender Demography

	n	%
<b>Offender Sex</b>		
Male	17	100%
Female	---	---
<b>Offender Race</b>		
White	13	76.5%
Black	2	11.8%
Hispanic	2	11.8%
<b>Offender Age</b>		
19 and under	4	23.5%
20-29	5	29.4%
30-39	5	29.4%
40-49	3	17.6%
50+	---	---
<b>Marital Status</b>		
Married	6	35.3%
Divorced	2	11.8%
Single	9	52.9%
Total	17	100.0%

Table 7. Child Victim Demography

	n	%
<b>Victim Sex</b>		
Male	1	05.9%
Female	16	94.1%
<b>Victim Age</b>		
2-6	4	23.5%
7-10	3	17.6%
11-12	4	23.5%
13-16	6	35.3%
Total	17	100.0%

Child kidnapping offenders were most likely to be an acquaintance of the victim (41.2%), while similar proportions of offenders were either a family member or stranger to the victim (29.4%). Most cases did not involve a weapon (70.6%) and the majority of children kidnapped did not sustain serious physical injury (88.2%). One kidnapping case, however, resulted in the death of the victim (5.9%). A large portion of child kidnappings involved a sexual component (76.5%).

Table 8. Child Kidnapping Offense Information

	n	%
<b>Offender to Victim Relationship</b>		
Family	5	29.4%
Acquaintance	7	41.2%
Stranger	5	29.4%
<b>Weapon Used</b>		
Firearm	3	17.6%
Knife	2	11.8%
No Weapon	12	70.6%
<b>Level of Physical Injury</b>		
Death	1	5.9%
Extreme Injury (short of death)	---	---
Moderate Injury (choked, punched)	1	5.9%
Mild Injury (grabbed, slapped)	9	52.9%
Threat of Injury	6	35.3%
<b>Sexual Component</b>		
Yes	13	76.5%
No	4	23.5%
<b>Total</b>	<b>17</b>	<b>100%</b>

A greater proportion of child kidnappers who were age 29 and under kidnapped children who were strangers (80.0% vs. 20.0%) or acquaintances (71.4% vs. 28.6%) compared to offenders who were age 30 or older. Offenders in the latter group accounted for all kidnappings involving family victims.

Table 9. Age of Offender and Relationship to Kidnapping Victim

	29 and Under		30 and Over		Total	
	n	%	n	%	n	%
Stranger	4	80.0%	1	20.0%	5	100%
Acquaintance	5	71.4%	2	28.6%	7	100%
Family	---	---	5	100%	5	100%
<b>Total</b>	<b>9</b>	<b>52.9%</b>	<b>8</b>	<b>47.1%</b>	<b>17</b>	<b>100%</b>

An examination of the number and percentage of child kidnappers with prior charges and convictions by type of offense shows some interesting findings. One of the 17 child kidnappers had no prior charges and two had no prior convictions. Most (82.4%) had at least one charge for a prior violent or sex offense, with nearly 65% of these being convicted. Nearly 71% had at least one charge for a property offense, with 65% convicted. About half (52.9%) had at least one charge for a drug or alcohol offense or public order offense. For the most part, then, these offenders had previous involvement in the justice system.

Table 10. Number and Percentage of Child Kidnappers with Prior Charges and Convictions, by Offense Type

Offense Type	Charge		Conviction	
	n	%	n	%
Violent/Sex	14	82.4%	11	64.7%
Drug/Alcohol	9	52.9%	7	41.2%
Property	12	70.6%	11	64.7%
Public Order	9	52.9%	10	58.8%
No Priors	1	5.9%	2	11.8%
<b>Total Offenders</b>	<b>17</b>	<b>100%</b>	<b>17</b>	<b>100%</b>

*Offenders may be included in multiple categories.*

### **Enticing a Minor**

This portion of this report focuses on offenders with convictions for Enticing a Minor (§710.10) disposed between CY2002 and 2012 and their victims. These enticement convictions were examined because some of these cases were failed kidnappings. The data examined **excluded** 46 cases in which a police officer posed as a child over the Internet, as these cases did not involve actual child victims. The data from this section are based on the actual number of offenders (97) and victims (103) rather than on the number of convictions.

The majority of convictions disposed during this time period were for aggravated misdemeanors (58.3%). Slightly less than 42% of convictions disposed were for a felony level offense (36.9% D felony and 4.9% C Felony).

Table 11. Class and Description of Child Enticement Convictions with an Actual Victim

Class	Convicting Description	n	%
Aggravated Misdemeanors	Attempt to Entice a Minor (AGMS)	33	32.0%
	Attempt to Entice a Minor	12	11.7%
	Attempt to Entice Away a Child – 1987 (AGMS)	15	14.6%
	Total	60	58.3%
D Felony	Enticing Away a Child -1987 (FELD)	7	6.8%
	Entice Minor Under 16	3	2.9%
	Enticing a Minor Under 16-Sexual Purpose	4	3.9%
	Enticing a Minor (FELD)	24	23.3%
	Total	38	36.9%
C Felony	Enticing a Minor Under 13 Sex Abuse/Exploit (FELC)	5	4.9%
	Total	5	4.9%
Total		103	100%

Offenders convicted of Enticing a Child were overwhelmingly male (99.0%) and white (75.3%). Over one-third of these offenders were between the ages of 20 and 29 (38.1%) and fewer than 17% were married. Greater proportions of enticement victims were female (70.9%) and between the ages of 13-15 (46.6%).

Table 12. Offender Information

	n	%
<b>Offender Sex</b>		
Male	96	99.0%
Female	1	1.0%
<b>Offender Race</b>		
White	73	75.3%
Black	12	12.4%
Hispanic	12	12.4%
<b>Offender Age</b>		
19 and under	14	14.4%
20-29	37	38.1%
30-39	22	22.7%
40-49	15	15.5%
50+	9	9.3%
<b>Marital Status</b>		
Married	16	16.5%
Divorced	12	12.4%
Single	52	53.6%
Unknown	17	17.5%
<b>Total</b>	<b>97</b>	<b>100%</b>

Table 13. Victim Information

	n	%
<b>Victim Sex</b>		
Male	11	10.7%
Female	73	70.9%
Unknown	19	18.4%
<b>Victim Age</b>		
2-6	3	2.9%
7-10	7	6.8%
11-12	12	11.7%
13-15	48	46.6%
Unknown	33	32.0%
<b>Total</b>	<b>103</b>	<b>100%</b>

Enticements were least likely to occur between family members (3.9%) and most likely to occur between acquaintances (40.8%). About 28% of enticements convictions were committed by a stranger, a figure similar to what was found for child kidnapping.

Table 14. Relationship of Offender and Victim

	n	%
<b>Offender to Victim Relationship</b>		
Family	4	3.9%
Acquaintances	42	40.8%
Strangers	29	28.2%
Unknown	28	27.2%
<b>Total</b>	<b>103</b>	<b>100%</b>

Similar incidences of attempted and actual sexual assaults were found among victims aged 2-6 and 7-10. Children between the ages of 11 and 12 were much more likely to be victims of an attempted assault than actual sexual assault (75.0% vs. 25.0%). The apparent reason for the decrease in actual sexual assaults among this age group is because the youth tend to run to an adult when solicited. This pattern reverses for victims between the ages of 13-15, a group exhibiting not only the greatest number of victims, but also the highest percentage of actual sexual assaults (62.5%).

Table 15. Sexual Component of Child Enticement Convictions, by Age of Victim

	<b>Sex</b>		<b>Attempted Sex</b>		<b>No Sex</b>	<b>Unknown</b>	<b>Total</b>	
	<b>n</b>	<b>%</b>	<b>N</b>	<b>%</b>	<b>n</b>	<b>n</b>	<b>n</b>	<b>%</b>
2-6	1	33.3%	1	33.3%	1	0	3	100%
7-10	3	42.9%	3	42.9%	0	1	7	100%
11-12	3	25.0%	9	75.0%	0	0	12	100%
13-15	30	62.5%	18	37.5%	0	0	48	100%
Unknown	4	12.1%	9	27.3%	1	19	33	100%
<b>Total</b>	<b>41</b>	<b>100.0%</b>	<b>40</b>	<b>100.0%</b>	<b>2</b>	<b>20</b>	<b>103</b>	<b>100%</b>



An examination of the age of the victim and age of the offender shows that older offenders were far more likely than younger offenders to attempt sexual contact without success. Younger offenders, however, were more numerous and were much more likely to complete a sex act, in part because their victims were likely to have given consent. Twenty-six of the enticement cases showed the victim willingly participating in sexual activity with the offender. All the consensual sex cases involved victims between the ages of 13 and 15. All but one case involving a victim between the ages of 13 and 15 and an offender 29 or younger resulted in consensual sex.

Table 16. Sexual Component by Age of Victim and Age of Offender

Sex	Victim Age	Offender Age					Total
		<=19	20-29	30-39	40-49	50+	
Attempted	2-10	0	1	2	0	1	4
	11-12	1	3	1	4	0	9
	13-15	1	3	6	4	4	18
	Total Attempted	2	7	9	8	5	31
Actual	2-10	2	2	0	0	0	4
	11-12	2	1	0	0	0	3
	13-15*	6	21	2	0	1	30
	Total Actual	10	24	2	0	1	37
	<b>Total</b>	<b>12</b>	<b>31</b>	<b>11</b>	<b>8</b>	<b>6</b>	<b>68</b>

Consensual*		6	20	0	0	0	26
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Table shows victim count.

Thirty-five cases excluded because of incomplete information.

## **Michael Klunder's Offenses, Criminal Justice Movements, and Legislative Changes**

As a juvenile, Michael James Klunder was arrested on November 14, 1986 (age 15) for Assault with Intent to Commit Sexual Abuse. Following his adjudication he was sent to various juvenile detention facilities including Eldora, Meyer Hall, Bremwood, and Cherokee. Shortly after his release from juvenile custody in November of 1988, he was arrested again on February 22, 1989 and subsequently convicted of Assault with Intent to Commit Serious Injury. While in custody, he was additionally charged with Burglary -2<sup>nd</sup> Degree for an unrelated offense which was later amended to Attempted Burglary -2<sup>nd</sup> Degree and waived to adult court. On May 5, 1989 he was sentenced to up to five years in prison for Attempted Burglary -2<sup>nd</sup> and two years for the Assault with Intent to Commit Serious Injury, with the sentences to run concurrently. On February 6, 1991 Klunder was placed on work release and on August 17, 1991 he was discharged from supervision.

As an adult, Klunder's initial victim was an adult woman whom he kidnapped and assaulted on December 15, 1991 (less than four months from his earlier discharge). The woman escaped with minor injury. The following day he kidnapped two three-year-old girls, one of whom sustained injury consistent with choking. For the offense involving the adult woman, he was charged with third-degree kidnapping (C Felony) and assault with intent to commit sexual abuse (D Felony) and convicted of third-degree kidnapping (C Felony) and assault resulting in injury (Serious Misdemeanor). For the offense involving the two girls, he was charged with Kidnapping-1<sup>st</sup> and Kidnapping-3<sup>rd</sup> which, following a plea negotiation, were amended to two counts of third-degree kidnapping and one count of willful injury (C Felony). The sentences for these offenses were ordered to run consecutively, resulting in a sentence of up to 41 years in prison.

Information acquired from presentence investigations and parole reviews provide evidence that Klunder was a danger to society. On September 10, 1992 a Presentence Investigation (PSI) was completed, revealing that Klunder was "at high risk to reoffend, making him a serious threat to the safety of the members of the community." The PSI investigator recommended "long term placement in a highly structured environment" for Klunder. Similarly, from 1993-2008 Klunder was denied parole annually. Considering his previous criminal history and current conviction, the Parole Board agreed that there was insufficient evidence to suggest that he would be able to fulfill the obligations of a law-abiding citizen. Klunder's 2006 and 2007 annual parole reviews stated that "the Board does not feel that a parole at this time would be in the best interest of society".

During Klunder's incarceration (1992-2010) there were several changes made to Iowa's sex offender policies. In 1995, the Sex Offender Registry was established, requiring that "on or after July 1, 1995, an individual who has been convicted or adjudicated of a criminal offense against a minor, sexual exploitation, or a sexually violent crime or who was on probation, parole, or work release status, or who was incarcerated on or after July 1, 1995 is required to register. Registration does include individuals that have received a deferred sentence or deferred judgments and can include convictions from other jurisdictions such as other states and/or federal convictions."<sup>86</sup>

In addition, there were three major changes in the Iowa Code in the 2000's pertaining to sex offenses and sex offenders. The first was in 2002, with the implementation of a 2,000-ft residency restriction limiting where convicted sex offenders could reside. While that provision's implementation was delayed until October of 2005 pending judicial review, the passage of that requirement was a significant change in sex offender management in the community.

In 2005, additional legislation was passed to increase penalties for certain sex offenses and create "special sentences" that place sex offenders on community supervision after completing their original sentences. The Special Sentence places offenders convicted of offenses in Iowa Code §709, §726.2, and §728.12 (1), (2), or (3) on either 10-year or life-time community supervision based solely upon the offense class of conviction, with offenders convicted of A, B, and C felony sex offenses receiving life-time community supervision and Serious and Aggravated misdemeanor and D felony offenders receiving 10-year supervision sentences (§903B, Code of Iowa). At that time, §692A, the Sex Offender Registry section of the Code, was also amended to link length of registration for some offenders to the Special Sentence length. Because none of Klunder's convictions fell under sections Chapters 709 or 728 or section 726.2, he would not have been eligible for Special Sentence supervision had the offenses taken place after July 1, 2005.

In 2009, the General Assembly amended §692A of the Code of Iowa (Sex Offender Registry) to move the State toward compliance with certain provisions of the federal Adam Walsh Act. Key changes included the creation of three tiers of offenders with increased reporting time frames, mandating registration for

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<sup>86</sup> <http://www.iowasexoffender.com/>

selected juvenile offenders, applying the residency restrictions to fewer offenders, and creating exclusionary zones for sex offenders.”<sup>87</sup>

Klunder’s 41-year sentence was subject to the earned time provisions of §903A.2, resulting in a discharge date a little over eighteen years after his admission to prison. Six months before his sentence expired he was placed on work release (September 24, 2010). Releasing offenders who have served lengthy periods of incarceration to work release provides a period of transition that permits offenders to adapt to community living while still under supervision.

Klunder was not considered for civil commitment as a sexually violent predator. The Attorney General’s Office reports that he was not referred. It was their opinion that it is arguably unlikely he would have met the criteria for a sexually violent predator because he was not convicted of a sex offense and the lack of evidence proving beyond a reasonable doubt that his crime(s) were sexually motivated. The Iowa Department of Humans Services website lists the criteria for referral:

In order to be referred to the Civil Commitment Unit for Sexual Offenders, the following must occur:

- The individual must be nearing completion of a criminal sentence for a "sexually motivated" offense;
- The individual must meet the criteria established by statute for a "sexually violent predator," including determination that the individual has a "mental abnormality" or "personality disorder" that makes it "more likely than not" to engage in future acts of a sexually violent nature;
- The individual must be referred for commitment by a Multidisciplinary Team, the Prosecutor's Review Committee, and be determined by a professional evaluator to be a high-risk for re-offending; and
- The individual must be found to be a "sexually violent predator" by a civil court.<sup>88</sup>

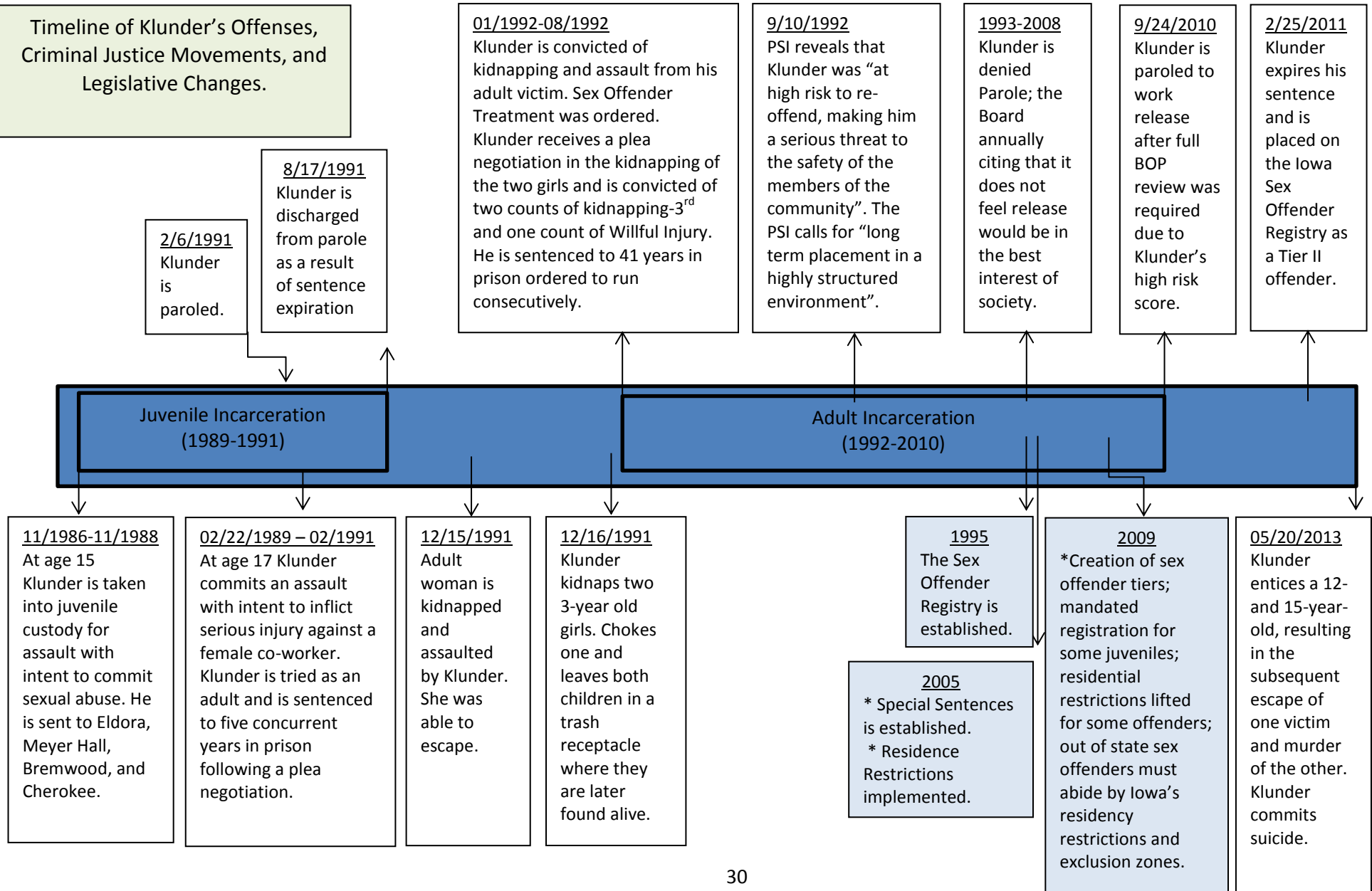
On February 25, 2011 Klunder expired his sentence, was discharged from work release, and placed on the Iowa Sex Offender Registry. Klunder was required to be on the Registry for ten years as a Tier II offender, subject to bi-annual reviews to verify relevant information (e.g., residency, employment). On May 20, 2013 Klunder kidnapped two girls age 12 (Desi Hughes) and 15 (Kathlynn Shepard). Ms. Hughes was able to escape, but Klunder murdered Ms. Shepard and subsequently committed suicide.

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<sup>87</sup> The Division of Criminal and Juvenile Justice Planning. Iowa Sex Offender Research Council: Report to the General Assembly. January, 2012.

<sup>88</sup> IDHS: Civil Commitment Unit for Sexual Offenders, <http://www.dhs.state.ia.us/Consumers/Facilities/CCUSO.html>

**Timeline of Klunder's Offenses,  
Criminal Justice Movements, and  
Legislative Changes.**



## Discussion of Results

Fortunately, incidents of child kidnapping are rare and contribute to only a fraction of violent crime experienced by children (less than 2%). Nonetheless, a review of current provisions relating to child kidnapping in Iowa is a worthy undertaking. A summary and discussion of the finding are presented below.

### **Iowa Child Kidnapping Cases Disposed CY 2002-2012**

As the analysis of kidnapping convictions over the last ten years shows, Iowa has had very few child kidnappings (n=17). The largest number of child kidnappings was committed by acquaintances (n=7) with equal numbers of child kidnappings committed by family members (n=5) and strangers (n=5). In these kidnappings, most children sustained minimal amounts of physical injury, the exception being two cases in which victims were acquaintances of their offender (with one case resulting in death). Regardless of the relationship between the offender and victim, most child kidnapping victims were sexually assaulted (n=13). Two of the 17 child kidnappers did not have prior convictions. Most had at least one charge for a prior violent offense (82.4%), with nearly two-thirds convicted (64.7%). Only four had a prior sex offense charge and conviction. All child kidnapping cases involved a male offender (n=17) and nearly always a female victim (n=16). A table containing information for these 17 cases, including any additional charges accrued as part of the kidnapping, is located in Appendix A.

### **Iowa Child Enticement Cases Disposed CY 2002-2012**

An examination of child enticement convictions revealed that nearly one-third (31%) had no actual victim (law enforcement internet sting operations). Of the 103 cases with actual victims, complete victim and offender information was available for 68 cases. Of these 68 cases, 26 involved “consensual” sexual activity between the victim and offender, particularly between younger offenders and older child victims. In cases where the victim was between the 13 and 15 years of age and the offender was 19 years old or younger, all but one incident involved consensual sexual activity. In cases where the offender was between the ages of 20-29, all but three cases involved consensual sexual activity. Excluding the cases without an actual victim (law enforcement Internet sting operations) and cases involving “consensual” sexual activity between the victim and offender, there were 77 victims of enticement cases disposed over the last decade, or roughly one out of every 95,000 children in Iowa is enticed annually.

### **Data Limitations**

The cohort examined here was not large enough to draw large conclusions as to the dangerousness of one type of kidnapper versus another. While there is some comfort in knowing that incidents of child kidnapping are rare in Iowa, this does not mean that some statutory provisions could not be developed to reduce their number.

### **Analysis of the Justice System in the Michael Klunder Case**

Many questions were raised following the kidnapping and subsequent murder of Kathlynn Shepard by abductor Michael Klunder. The public was curious as to how an offender with such an extensive criminal history was allowed into the community. After thorough review of this case, it is evident that efforts were made by the sentencing Judge and the Board of Parole to incapacitate Offender Klunder for the longest period of time permitted by statute. The Judge in the first and second Klunder kidnapping cases ordered his sentences to be served consecutively in order to maximize incapacitation. Also, the Board of Parole delayed work release until a few months before the expiration of his sentence. Klunder did not meet the criteria for civil commitment as a sexually violent predator. Upon release he was placed on the Iowa Sex Offender Registry for ten years as a Tier II offender and was subject to bi-annual reviews to verify relevant information (e.g., residency, employment). It is evident that Klunder's release was due not to lax parole policies, but rather the provisions in the Criminal Code pertaining to the accrual of earned time while an offender is incarcerated.

## **Proposed Recommendations**

### **Kathlynn's Hope Law**

The parents of Kathlynn Shepard have sought to bring attention to apparent weaknesses within the justice system by petitioning to have Kathlynn's Hope Law adopted. This Law is modeled after California legislation (Chelsea's Law). It calls for:

1. A new one-strike life without parole penalty for sexual predators who commit the most heinous violent sex crimes against children
2. Lifetime GPS monitoring for those convicted of felony sex crimes against children
3. The collection of online identifiers from persons on the Iowa sex offender registry".<sup>89</sup>

Many of the elements in this particular proposal have been adopted or adopted in varying degrees in Iowa. For example, the one-strike provision is covered under criminal code §710.2 and the lifetime supervision and monitoring is required under the sex offender registry and special sentence (with or without GPS monitoring).

Proposed legislation to combat kidnapping offenses should address weaknesses in the current criminal code. The following proposals represent options for criminal code revisions which may keep dangerous kidnappers incarcerated for longer durations, improving public safety.

### **Modify Iowa Code to Specifically Address Child Kidnapping**

The Iowa Code could be modified to specifically address non-parental /custodial child kidnapping. A review of criminal codes in the seven surrounding states shows four (South Dakota, Minnesota, Illinois, and Missouri) have specifically addressed child kidnapping in their codes. Appendix B provides kidnapping descriptions and penalties enacted by these states. Policymakers should engage in discussion defining the parameters and penalties for kidnapping a child.

### **Add Kidnapping in the Third Degree Subject to the Mandatory Provisions of §902.12**

Another opportunity to increase incapacitation and supervision of convicted kidnappers would be to add Kidnapping-3<sup>rd</sup> to the list of offenses covered by the mandatory provisions of §902.12 of the Iowa Code. Kidnapping-2<sup>nd</sup> is already included among these offenses. While including Kidnapping-3<sup>rd</sup> among these offenses might lead to increased plea negotiation at trial, doing so would offer an opportunity to incapacitate truly dangerous kidnappers for longer periods of time. The number of convicted

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<sup>89</sup> <http://chelseasshield.org/wp-content/uploads/Kathlynns-Hope-Law-petition.pdf>



kidnappers is also sufficiently small in Iowa that such a step would not result in a significant rise in prison population. Even if changes were made to modify the requirements of §902.12, it is likely that the addition of kidnapping-3<sup>rd</sup> to the list of applicable offenses could increase protection of Iowa's children.

#### **Revise Iowa Code §710.3 to Include Subsequent Kidnappings**

Iowa Code §710.3 is narrowly defined and rarely imposed, as it penalizes only kidnapping involving a ransom or dangerous weapon. This section of the Code should be revised to include language making any subsequent kidnapping conviction an automatic Class B felony subject to the mandatory minimum contained in §902.12. If a system of graduated penalties had been in place for repeat kidnapping offenders in 1991, Michael Klunder would have remained incarcerated for a minimum of 17 additional years.

#### **Make Kidnapping with a Sexual Component Subject to the §903.B1 Special Sentence**

Legislation seeking to strengthen oversight of sex offenders was put into place in 2005 with the addition of the Special Sentence, which requires sex offenders to be supervised for an additional 10 years or life after the expiration of their sentences, depending on the offense. At this time, the Special Sentence does not apply to offenders convicted of kidnapping. One opportunity to increase supervision of convicted kidnappers would be to apply Special Sentence provisions to those convicted of any of the three classes of kidnapping. Such a step should be taken carefully, however, as not all kidnappers necessarily need post-sentence supervision. One option would be to apply the Special Sentence in kidnappings having a sexual component committed by offenders at high risk for further violent crime. This recommendation is made with some reservation, however, as the impact of the Special Sentence has yet to be examined in Iowa. Given the extensive resources required to adequately supervise offenders covered by the Special Sentence, the State, at the earliest opportunity, should begin monitoring the impact of the Special Sentence to determine its cost and impact on offender recidivism.

### **Enhanced Penalties When a Child is Present**

The review of Iowa kidnapping cases shows that a number of children (22) were co-victims of kidnapping or witnesses to the beating, rape and sometimes torture of their mothers. While the children in these cases may not have been the victims of kidnapping in the legal sense, they were nonetheless frequently traumatized by these crimes. Research on domestic violence shows that, “even when children are not direct targets of violence in the home, they can be harmed by witnessing its occurrence”.<sup>90</sup> Iowa laws do not currently address violent crimes witnessed by children, but according to a 2009 report by the Children’s Bureau, at least 22 states address this issue.<sup>91</sup> Iowa law should take this into account in modifying kidnapping statutes.

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<sup>90</sup> Child Welfare Information Gateway. (2013). *Child witnesses to domestic violence*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau. Retrieved from: [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/witnessdv.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/witnessdv.pdf)

<sup>91</sup> Ibid.

## Conclusions

A review of child kidnapping cases in Iowa within the last ten years indicated weaknesses in the current Criminal Code. Proposed recommendations call for changes to the Criminal Code language, mandatory term length, and/or sentence length for kidnapping offenses involving children. Additionally, the current Code does not distinguish between adult and child kidnappings, and does not provide for penalty enhancements for offenses involving child witnesses (details which several other states have adopted). Iowa's Criminal Code could be further strengthened by addressing these core elements pertinent to child kidnapping.

Regardless of what other steps are taken pertaining to Iowa's kidnapping statutes, it is recommended that the penalties applied to kidnappers be structured to allow lengthy incapacitation of the truly dangerous and less severe consequences for those who have committed less heinous offenses or who present less threat to public safety. The "one size fits all" approach of mandatory sentences may result in insufficient incapacitation of dangerous criminals and, at the same time, unnecessary – and costly – imprisonment of those not so dangerous. In modifying its kidnapping statutes, Iowa should strive to target the most dangerous offenders without unduly burdening the corrections system with unnecessary imprisonment or offender supervision.

Additionally, the justice system in the United States is a system of accommodation. Changes in one part of the system almost invariably result in reactions in another. This has been demonstrated recently in Iowa in the examination of mandatory sentencing under Iowa Code §902.12, as the establishment of mandatory sentences has been accompanied by increased plea negotiation so that charged robbers, for example, enter prison as often convicted of theft as robbery. Thus, proposals to establish "mandatory" sentences have the potential to mislead the public into thinking that every offender charged with a serious crime will be convicted of that crime and will be incapacitated for a lengthy period.

There also is the risk that making the penalty for a crime so severe that crimes may go unreported, especially when there is a previous relationship between the victim and an offender. This is particularly true with sex crimes, when victims and offenders are most often either family members or acquaintances. A penalty too severe could result in crimes going unreported.

Finally, Iowa laws do not address violent crimes witnessed by children. Iowa law should take this into account in modifying kidnapping statutes.

## Appendix A.

Table A1. Offender and Victim Demography and Offense Information

Offender Age	Race	Sex	Convicting Class	Relationship	Sex of Victim	Kidnapping Type	Child age	Sentence	Age at release	Other Charges
19 or under	H	M	FELA	Stranger	F	Non-Familial: Predatory	13-16	Life w/parole 60 years	76 or Death	None
20-29	H	M	FELA	Stranger	F	Non-Familial: Predatory	7-10	Life	Death	None
30-39	C	M	FELA	Stranger	F	Non-Familial: Predatory	2-6	Life	Death	None
30-39	C	M	FELA	Acquaintance	F	Non-Familial: Predatory	7-10	Life	Death	MURDER 1ST DEGREE - 1978 (FELA)
40-49	C	M	FELA	Family	F	Familial: Domestic	2-6	Life	Death	ARSON 2ND DEGREE (FELC) BURGLARY 1ST DEGREE - 1983 (FELB) ELUDING (FELD) KIDNAPPING 1ST DEGREE - 1978 (FELA) REC. TRANSP, POS. FIREARM FELON (FELD) SEXUAL ABUSE 3RD DEGREE (FELC) SEXUAL ABUSE 3RD DEGREE (FELC)
20-29	C	M	FELB	Acquaintance	F	Non-Familial: Stereotypical	7-10	TDD 2027 (19 yrs.)	48	None
20-29	C	M	FELB	Acquaintance	F	Non-Familial: Predatory	13-16	TDD 2060 (53 yrs.)	74	Sex Abuse -2nd Degree(85%)-Life Special
19 or under	C	M	FELC	Acquaintance	F	Non-Familial: Predatory	2-6	TDD 2027 (25 yrs.)	44	SEXUAL ABUSE - 2ND DEGREE - 85%
19 or under	C	M	FELC	Stranger	F	Non-Familial: Predatory	11-12	TDD 2030 (18 yrs.)	37	BURGLARY 1ST ATTEMPTED BURGLARY 2ND Asslt. to Commit Sex Abuse/Bodily Inj.-10 Yr SS

Offender Age	Race	Sex	Convicting Class	Relationship	Victim Sex	Kidnapping Type	Child age	Sentence	Age at release	Other Charges
19 or under	C	M	FELC	Acquaintance	F	Non-Familial: Predatory	13-16	TDD 2016 (14 yrs.)	33	ASSLT WHILE PARTIC. IN FELONY, 2-SEXUAL PREDATOR PRIOR CONVICTION
20-29	B	M	FELC	Stranger	F	Non-Familial: Predatory	13-16	Discharged (6 yrs.)	26	SEXUAL ABUSE 3RD - NOT FORCIBLE
20-29	C	M	FELC	Acquaintance	F	Non-Familial: Predatory	13-16	Discharged (6 yrs.)	34	None
30-39	C	M	FELC	Family	F	Familial: Predatory	11-12	TDD 2022 (21 yrs.)	52	2-SEXUAL ABUSE 3RD DEGREE, Lascivious Acts with a Child - 2 years, CHILD ENDANGERMENT/SERIOUS INJ INDECENT CONTACT WITH A CHILD
30-39	C	M	FELC	Family	M	Familial: Domestic	11-12	TDD 2014 (7 yrs.)	45	2-HARASSMENT / 1ST DEG. CHILD ENDANGERMENT
30-39	C	M	FELC	Family	F	Familial: Predatory	13-16	TDD 2017 (13 yrs.)	52	709.4 SEXUAL ABUSE 3RD DEGREE
40-49	C	M	FELC	Acquaintance	F	Non-Familial: Stereotypical	2-6	TDD 2029 (19 yrs.)	61	ROBBERY 2ND DEGREE - 1978 (FELC) KIDNAPPING 3RD DEGREE - 1978 (FELC)
40-49	B	M	FELC	Family	F	Familial: Predatory	11-12	TDD 2017 (9 yrs.)	56	Sexual Abuse-3rd/Victim 12 or 13 year old

## Appendix B.

Table B1. Kidnapping Laws and Penalties in Surrounding States

KIDNAPPING POLICIES IN SURROUNDING STATES		
State	Kidnapping Definition	Penalty
Wisconsin	<p><u>Kidnapping § 940.31</u></p> <p>A person commits the crime of kidnapping if,</p> <ul style="list-style-type: none"> <li>■By force or threat of imminent force carries another from one place to another without his / her consent and with intent to secretly confine or imprison or to carry out of Wisconsin or hold to service against will.; or</li> <li>■By force or threat of imminent force seizes or confines another without his or her consent and with intent to cause him or her to secretly confine or imprison or to carry out of Wisconsin or hold to service against will; or</li> <li>■By deceit induces another to go from one place to another with intent to cause him or her to secretly confine or imprison or to carry out of Wisconsin or hold to service against will.</li> </ul>	<p>Kidnapping another person and holding that person against his will is a crime punishable by the penalties for a Class B felony if the victim is not released unharmed before the first witness is sworn at trial, or a Class C felony if released without harm.</p> <p><u>Class B Felony:</u> For a Class B Felony, the penalty is imprisonment up to 60 years; however, for a repeat offender the term of imprisonment may increase up to 2 years with prior misdemeanor convictions, and up to 6 years with a prior felony conviction.</p> <p><u>Class C Felony:</u> For a Class C Felony, the penalty is a fine of up to \$100,000, or imprisonment of up to 40 years, or both; however, for a repeat offender, the term of imprisonment may increase up to 2 years with prior misdemeanor convictions, and up to 6 years with a prior felony conviction.</p>
	<a href="http://www.vanwagnerwood.com/CM/Custom/felony.asp">http://www.vanwagnerwood.com/CM/Custom/felony.asp</a>	
Minnesota	<p><u>Kidnapping: § 609.25:</u></p> <p>A person is guilty of kidnapping if s/he confines or removes any person from one place to another without the person's consent or, if the person is under the age of 16 years, without the consent of the victim's parents or other legal custodian, for the following purposes:</p> <ul style="list-style-type: none"> <li>■to hold for ransom or reward for release, or as shield or hostage; or</li> <li>■to facilitate commission of any felony or flight thereafter; or</li> </ul>	<p>In Minnesota, if the offender releases the victim in a safe place without great bodily harm, the offender will be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$35,000, or both.</p> <p>If the victim is not released in a safe place, or if the</p>

	<ul style="list-style-type: none"> <li>■to commit great bodily harm or to terrorize the victim or another; or</li> <li>■to hold in involuntary servitude.</li> </ul> <p>The crime of kidnapping requires proof of an additional element: intent to confine for the purpose of committing an additional felony.[i]</p>	victim suffers great bodily harm during the course of the kidnapping, or if the person kidnapped is under the age of 16, the offender will be sentenced to imprisonment for not more than 40 years or to payment of a fine of not more than \$50,000, or both.
<a href="http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/minnesota-kidnappingabduction-laws/">http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/minnesota-kidnappingabduction-laws/</a>		
Illinois	<p><u>Kidnapping: 720 ILCS 5/10-1</u> Kidnapping occurs when a person knowingly and secretly confines another person against his/her will by using force, threat of force, deceit, enticement. Kidnapping also includes the confinement of a mentally retarded person and the confinement of a child less than 13 years without the consent of the parent.</p> <p><u>Aggravated Kidnapping: 720 ILCS 5/10-2</u> A person commits the offense of aggravated kidnapping, if s/he kidnaps another to obtain ransom, inflicts body harm armed with a dangerous weapon and armed with firearms. Also, a person who kidnaps a child under 13 years or a mentally retarded person commits the offense of aggravated kidnapping.</p>	<p><u>Kidnapping Class 2 Felony:</u> For a Class 2 felony, the sentence of imprisonment shall be not less than three years and not more than seven years. The offender may be sentenced to pay a fine not to exceed, \$ 25,000 or the amount specified in the offense, whichever is greater.</p> <p><u>Aggravated Kidnapping Class X felony:</u> For a Class X felony, the sentence of imprisonment shall be not less than six years and not more than 30 years. According to Section 720 ILCS 5/10-2, additional imprisonment is awarded for committing aggravated kidnapping from 15 to 25 years which is added to the term of imprisonment imposed by the court depending upon the gravity of the crime.</p> <p>A person who is convicted of a second or subsequent offense of aggravated kidnapping will be sentenced to a term of natural life imprisonment. However, the life imprisonment shall not be imposed unless the second or subsequent offense was committed after conviction on the first offense.</p>
<a href="http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/illinois-kidnappingabduction-laws/">http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/illinois-kidnappingabduction-laws/</a>		
Missouri	<p>Kidnapping § 565.115 R.S.Mo</p> <p><u>Child kidnapping--penalty.</u></p>	<p><u>Class A Felony:</u> Kidnapping is a class A felony. In Missouri, under § 558.011 R.S.Mo., sentence for a</p>

	565.115. 1. A person commits the crime of child kidnapping if such person is not a relative of the child within the third degree and such person:  (1) Unlawfully removes a child under the age of fourteen without the consent of such child's parent or guardian from the place where such child is found; or  (2) Unlawfully confines a child under the age of fourteen without the consent of such child's parent or guardian.  2. In determining whether the child was removed or confined unlawfully, it is an affirmative defense that the person reasonably believed that the person's actions were necessary to preserve the child from danger to his or her welfare.  3. Child kidnapping is a class A felony.		class A felony, is a term of years not less than 10 years and not more than 30 years, or life imprisonment.		
<a href="http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/missouri-kidnappingabduction-laws/">http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/missouri-kidnappingabduction-laws/</a>					
Kansas	Kidnapping K.S.A. § 21-3420: Kidnapping is the taking or confining of any person, accomplished by force, threat or deception, with the intent to hold such person: ■for ransom, or as a shield or hostage; ■to facilitate flight or the commission of any crime; ■to inflict bodily injury or to terrorize the victim or another; or ■to interfere with the performance of any governmental or political function.		Personal Felony (Severity Level 3): All Kidnappings.  Personal Felony (Severity Level 1): When bodily harm is inflicted, kidnapping is aggravated kidnapping.  Kansas kidnapping statute does not require any particular distance of removal, or any particular time or place of confinement. It is the fact, not the distance, of a taking (or the fact, not the time or place, of confinement) that supplies a necessary element of kidnapping.  The sentence length is dependent upon prior criminal history as outlined below.		
	Severity Level	1 prior person felony	1 prior nonperson felony	2+ prior misdemeanors	1 prior misd. or no record



	<table><tr><td>I</td><td>253 months</td><td>195 months</td><td>176 months</td><td>155 months</td></tr><tr><td>II</td><td>190</td><td>146</td><td>131</td><td>117</td></tr><tr><td>III</td><td>94</td><td>72</td><td>66</td><td>59</td></tr><tr><td>IV</td><td>66</td><td>50</td><td>45</td><td>41</td></tr><tr><td>V</td><td>52</td><td>41</td><td>36</td><td>32</td></tr><tr><td>VI</td><td>34</td><td>24</td><td>20</td><td>18</td></tr><tr><td>VII</td><td>24</td><td>16</td><td>13</td><td>12</td></tr><tr><td>VII</td><td>16</td><td>10</td><td>10</td><td>8</td></tr><tr><td>IX</td><td>12</td><td>8</td><td>7</td><td>6</td></tr><tr><td>X</td><td>9</td><td>6</td><td>6</td><td>6</td></tr></table>	I	253 months	195 months	176 months	155 months	II	190	146	131	117	III	94	72	66	59	IV	66	50	45	41	V	52	41	36	32	VI	34	24	20	18	VII	24	16	13	12	VII	16	10	10	8	IX	12	8	7	6	X	9	6	6	6	
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Nebraska	<p><u>Kidnapping: § 28-313:</u> According to Nebraska Laws, a person commits kidnapping if s/he abducts another or, having abducted another, continues to restrain him or her with intent to do the following:</p> <ul style="list-style-type: none"><li>■ Hold him or her for ransom or reward; or</li><li>■ Use him or her as a shield or hostage; or</li><li>■ Terrorize him or her or a third person; or</li><li>■ Commit a felony; or</li><li>■ Interfere with the performance of any government or political function.</li></ul> <p>Kidnapping is the crime of taking a person against their will to an undisclosed location. This may be done for ransom or in furtherance of another crime, or in connection with a child custody dispute.</p>	<p>Nebraska laws classify kidnapping into two categories: First degree and Second degree.</p> <p><u>Kidnapping Class I Felony:</u> Kidnapping is a Class 1 Felony</p> <p><u>Kidnapping Class II Felony:</u> If the person kidnapped is voluntarily released or liberated alive by the abductor and is in a safe place without having suffered serious bodily injury, prior to trial, kidnapping is a Class II felony.</p>																																																		
		<p><u>Class I felony:</u> Death</p> <p>Class IA felony: Life imprisonment without parole</p> <p>Class IB felony: Maximum -- life imprisonment</p> <p>Minimum -- twenty years imprisonment</p> <p>Class IC felony: Maximum -- fifty years imprisonment</p> <p>Mandatory minimum -- five years imprisonment</p> <p>Class ID felony: Maximum -- fifty years</p>																																																		

		<p>imprisonment</p> <p>Mandatory minimum -- three years imprisonment</p> <p><u>Class II felony</u>: Maximum -- fifty years imprisonment</p> <p>Minimum -- one year imprisonment.</p>
	<a href="http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/nebraska-kidnappingabduction-laws/">http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/nebraska-kidnappingabduction-laws/</a>	
South Dakota	<p><u>Kidnapping First Degree: 22-19-1</u></p> <p>Any person is guilty of kidnapping in the first degree who, either</p> <ul style="list-style-type: none"> <li>■unlawfully removes another person from the other’s place of residence or employment, or</li> <li>■who unlawfully removes another person a substantial distance from the vicinity where the other was at the commencement of the removal, or</li> <li>■who unlawfully confines another person for a substantial period of time, with any of the following purposes: <ul style="list-style-type: none"> <li>■To hold for ransom or reward, or as a shield or hostage; or</li> <li>■To facilitate the commission of any felony or flight thereafter; or</li> <li>■To inflict bodily injury on or to terrorize the victim or another; or</li> <li>■To interfere with the performance of any governmental or political function; or</li> <li>■To take or entice away a child under the age of fourteen years with intent to detain and conceal such child.</li> </ul> </li> </ul> <p><u>Kidnapping Second Degree: 22-19-1.1</u></p> <p>Any person who unlawfully holds or retains another person with any of the following purposes:</p> <ol style="list-style-type: none"> <li>(1) To hold for ransom or reward, or as a shield or hostage; or</li> <li>(2) To facilitate the commission of any felony or flight thereafter; or</li> <li>(3) To inflict bodily injury on or to terrorize the victim or another; or</li> <li>(4) To interfere with the performance of any governmental or</li> </ol>	<p>South Dakota laws classify kidnapping into two categories: first degree and second degree.</p> <p><u>First Degree Kidnapping</u> is a Class C Felony unless the person has inflicted serious bodily injury on the victim, in which case it is aggravated kidnapping in the first degree and is a <u>Class B Felony</u>.</p> <p><u>Class B Felony</u>: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;</p> <p><u>Class C Felony</u>: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;</p> <p>(“South Dakota felony offenders committing Class B felony can be charged with nothing less than life imprisonment in the state penitentiary, plus the optional addition of a 50,000.00 dollar fine. South Dakota felonies that fall under the figure of Class C felony have the same similar maximum sentence, with the difference that a lesser charge may apply”)<sup>92</sup>.</p>

	<p>political function; or</p> <p>(5) To take or entice away a child under the age of fourteen years with intent to detain and conceal such child; is guilty of kidnapping in the second degree. Kidnapping in the second degree is a Class 3 felony, unless the person has inflicted serious bodily injury on the victim in which case it is aggravated kidnapping in the second degree and is a Class 1 felony.</p>	<p><u>Second Degree Kidnapping:</u> Kidnapping in the second degree is a Class 3 felony, unless the person has inflicted serious bodily injury on the victim in which case it is aggravated kidnapping in the second degree and is a Class 1 felony.</p> <p><u>Class 1 Felony:</u> fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;</p> <p><u>Class 3 Felony:</u> fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;</p> <p>Further, if any person receives, possesses, or disposes of any money or other property which has, at any time, been delivered as ransom or reward in connection with a kidnapping and who knows that the money or property is ransom or reward in connection with a kidnapping, is guilty of a Class 3 felony.</p>
	<a href="http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/south-dakota-kidnappingabduction-laws/">http://kidnapping.uslegal.com/state-kidnapping-abduction-laws/south-dakota-kidnappingabduction-laws/</a>	
	<a href="http://www.governmentregistry.org/criminal_records/felonies/state_felonies/south_dakota_felonies.html">http://www.governmentregistry.org/criminal_records/felonies/state_felonies/south_dakota_felonies.html</a>	
	<a href="http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=22-6&amp;Type=StatuteChapter">http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=22-6&amp;Type=StatuteChapter</a>	
	<a href="http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&amp;Statute=22-19-1.1">http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&amp;Statute=22-19-1.1</a>	